

# UNITED STATES TRUST COMPANY

OF NEW YORK

45 WALL STREET, NEW YORK, N. Y. 10005

RECORDATION NO. 8657 Filed & Recorded

JAN 11 1977 1 21 PM

INTERSTATE COMMERCE COMMISSION

7-011A034

JAN 11 1977 RECORDATION NO. 8657 Filed & Recorded  
JAN 11 1977 1 21 PM

INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C. RECORDATION NO. 8657 Filed & Recorded

JAN 11 1977 1 21 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8657 Filed & Recorded

JAN 11 1977 1 21 PM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Office of the Secretary  
Washington, D.C. 20423

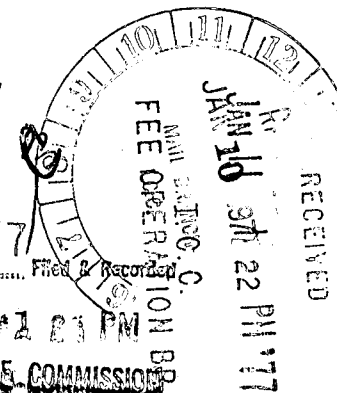
Gentlemen:

With this letter we are enclosing for filing and recording, pursuant to 49 U.S.C. §20c, the original and three counterparts of the following:

1. Supplement to the Trust Indenture, dated as of October 1, 1976, and the Trust Indenture, dated as of May 1, 1975, signed by First Security Bank of Utah, N.A. and Thomas C. Cuthbert, not in their individual capacities, but solely as Owner Trustees, and United States Trust Company of New York, as Trustee.
2. Master Equipment Lease, dated as of October 1, 1976, signed by First Security Bank of Utah, N.A. and Thomas C. Cuthbert, not in their individual capacities, but solely as Owner Trustees, as Lessor, and Kansas City Southern Industries, Inc., as Master Lessee.
3. Lease Supplement No. 1, dated as of October 1, 1976, between First Security Bank of Utah, N.A. and Thomas C. Cuthbert, not in their individual capacities, but solely as Owner Trustees, and Kansas City Southern Industries, Inc., as Master Lessee and Lessee.

Attached are checks in the amount of \$120.00 covering the recordation fees.

The names and addresses of the parties to the documents are as follows (as filed herewith):



Owner Trustees under Supplement  
to the Trust Indenture and  
Trust Indenture and Lessor  
under Master Equipment Lease  
and Lease Supplement No. 1

First Security Bank of Utah,  
N.A. and Thomas C. Cuthbert,  
as Owner Trustees  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: John Beckstead, Esq.

Trustee under Supplement to  
the Trust Indenture and  
Trust Indenture

United States Trust Company  
of New York, as Trustee  
130 John Street  
New York, New York 10039  
Attention: Corporate Trust  
and Agency Division

Master Lessee under Master  
Equipment Lease and Master  
Lessee and Lessee under  
Lease Supplement No. 1

Kansas City Southern  
Industries, Inc.  
114 W. 11th Street  
Kansas City, Missouri 64105  
Attention: Richard P. Bruening  
General Counsel

The equipment which has been accepted and is the  
subject of this filing of the Supplement to the Indenture  
and Trust Indenture, Master Equipment Lease and Lease  
Supplement No. 1 consists of the following:

<u>Manufacturer or Seller</u>	<u>Description</u>	<u>Identification or Serial No.</u>
Tamper Division Camron, Inc.	Hydronewer (Tie Renewer)	MW 592 25715386
"	"	MW 583 25715396
"	"	MW 584 25715406
"	"	MW 585 25715416
"	"	MW 586 25715426
"	"	MW 587 25715436

Tamper Division Camron, Inc.	Hydronewer (Tie Renewer)	MW 588 25715446
"	"	MW 589 25715456
"	"	MW 590 25715466
"	"	MW 591 25715476
Jackson Vibrators, Inc.	Model 6000 Jackson automatic high production tamper/liner	MW 801 123813
Jackson Vibrators, Inc.	Tamper with Jack and liner model 2300 (2 items)	124904 124905
Jackson Vibrators, Inc.	High production tamper/liner model 6000	123814
Fairmont Railway Motors, Inc.	Tie Shear	242478 MW 817

The equipment and will be marked, pursuant to Exhibit 2 to Lease Supplement No. 1, as follows:

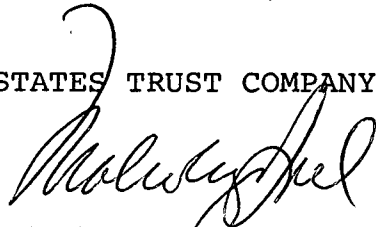
FIRST SECURITY BANK OF UTAH, N.A. and THOMAS C. CUTHBERT, not in their individual capacities, but solely as Trustees, as Lessor under Kansas City Southern Industries, Inc. 1976 Equipment Lease No. 1; UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee, Secured Party and Lien Holder.

Please stamp one of the three counterparts to each of the documents with the recordation number, time and date and return such stamped counterparts to the messenger delivering these documents, together with your fee receipt and your usual letter confirming recordation.

Very truly yours,

UNITED STATES TRUST COMPANY OF NEW YORK

By

  
Malcolm J. Hood  
Vice President

KCS#

# COUNTERPART

---

85570  
RECORDATION NO. .... Filed & Recorded

JAN 11 1977 - 1 21 PM

MASTER EQUIPMENT LEASE

INTERSTATE COMMERCE COMMISSION

Dated as of October 1, 1976

Between

FIRST SECURITY BANK OF UTAH, N.A. and  
THOMAS C. CUTHBERT, not in their individual  
capacities, but solely as Owner Trustees under a  
Master Trust Agreement dated as of May 1, 1975  
between the Owner Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976  
as *Lessor*

and

KANSAS CITY SOUTHERN INDUSTRIES, INC.,  
as *Master Lessee*

---

## MASTER EQUIPMENT LEASE

THIS MASTER EQUIPMENT LEASE dated as of October 1, 1976 between FIRST SECURITY BANK OF UTAH, N.A., a national banking association (the *Corporate Trustee*), and THOMAS C. CUTHBERT (the *Individual Trustee*), not in their individual capacities, but solely as trustees (the *Owner Trustees* or the *Lessor*), under a Master Trust Agreement dated as of May 1, 1975 between the Owner Trustees and Itel Leasing Corporation and as amended as of October 1, 1976, and KANSAS CITY SOUTHERN INDUSTRIES, INC., a Delaware corporation (the *Master Lessee*).

### W I T N E S S E T H :

WHEREAS, the Master Lessee desires to create pursuant hereto an arrangement whereby separate leases may be created from time to time by either the Master Lessee or a subsidiary thereof for the purposes of leasing certain equipment in separate and distinct transactions;

WHEREAS, each such separate lease is to be created pursuant to a separate Lease Supplement referred to below; and

WHEREAS, the Lessor is willing to lease equipment on the terms and conditions set forth herein and in any Lease Supplement.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. *Definitions; Construction of References*

In this Master Equipment Lease, unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Master Equipment Lease and, together with all other defined terms herein, shall include the plural as well as the singular:

(a) *Certificate of Acceptance* shall mean a certificate of acceptance substantially in the form of Exhibit A hereto.

(b) *Business Day* shall mean any day other than a Saturday, Sunday or other day on which banks in The City of New York, New York, are authorized to close.

(c) *Indenture* shall mean the Trust Indenture dated as of May 1, 1975 between United States Trust Company of New York, a New York corporation, as trustee thereunder (the *Trustee*), and the Corporate Trustee and the Individual Trustee.

(d) *Lease* shall mean an agreement for lease of specific equipment created pursuant to this Master Equipment Lease consisting of this Master Equipment Lease as it is supplemented or amended by a single Lease Supplement. References to a particular Lease shall mean the lease agreement created by a single Related Lease Supplement and shall not include any lease agreement created by any other Lease Supplement hereto, even if it bears the same designation, unless otherwise specifically provided in both such Related Lease Supplement and such other Lease Supplement.

(e) *Lease Supplement* shall mean a lease supplement substantially in the form of Exhibit B hereto.

(f) *Substantial Subsidiary* shall mean any subsidiary of the Master Lessee meeting any one of the following conditions:

- (i) The assets of such subsidiary, or the investment in or advances to such subsidiary by the Master Lessee and other subsidiaries of the Master Lessee, if any, exceed 5% of the assets of the Master Lessee and its subsidiaries on a consolidated basis;
- (ii) The sale and operating revenues of such subsidiary exceed 10% of the sales and operating revenues of the Master Lessee and the subsidiaries of the Master Lessee on a consolidated basis; or
- (iii) Such subsidiary is a parent of one or more subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a Substantial Subsidiary within the meaning of clauses (i) or (ii) above.

(g) With respect to a particular Lease

*Equipment*, and individually an *Item* or *Item of Equipment*, shall mean the items of equipment described in Exhibit 1 to the Related Lease Supplement.

*Final Delivery Date, Daily Lease Rate Factor, Rent Commencement Date, Interim Rent Date, Basic Lease Rate Factor, Basic Rent Dates, First Basic Rent Date, Last Basic Rent Date, Expiration Date, Depreciable Life, Investment Tax Credit, Depreciation Method, Overdue Rate, Return of Equipment and Marking of Equipment* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 to the Related Lease Supplement.

*First Termination Date and Lease Extension Periods*, if either or both of such terms shall be applicable to such Lease, shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 to the Related Lease Supplement.

*Casualty Value* and, if such term shall be applicable to such Lease, *Termination Value* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 3 to the Related Lease Supplement.

*Closing Dates* shall have the meaning set forth in the Related Participation Agreement.

*Group of Equipment and Lessor's Cost* shall have the meanings set forth in the Certificate of Acceptance with respect to any Item or Items of Equipment.

*Related Lease Supplement* shall mean the Lease Supplement creating such Lease.

*Related Lessee* shall mean the corporation named as "Lessee" in the Related Lease Supplement.

*Related Notes* shall mean those promissory notes defined as *Notes* in the Related Participation Agreement issued in connection with the purchase of the Leased Equipment.

*Related Participation Agreement* shall mean that portion of the agreement, dated the date of the Related Lease Supplement, as it relates to the Equipment, among the Lessor, the Master Lessee, the Related Lessee and the other corporations, if any, named as "Lessee" therein, the institution or institutions named as "Beneficiary" therein (the *Related Beneficiary*) and the other beneficiaries if any, named therein, the

proposed purchaser or purchasers of the Related Notes named therein (the *Related Lender*) and the proposed purchasers, if any, of the notes of the other series named therein, and the Trustee.

*Related Purchase Documents* shall mean those documents defined as *Purchase Documents* in the Related Participation Agreement which relate to the Equipment.

*Related Supplement* shall mean each indenture supplemental to the Indenture defined as *Supplement* in the Related Participation Agreement creating a series of Related Notes.

(h) The term *this Master Equipment Lease* means this instrument as originally executed, as it may from time to time be amended by one or more amendments hereto pursuant to the provisions hereof.

(i) All references in this instrument to designated Sections and other subdivisions are to designated Sections and other subdivisions of this instrument; and the words *herein*, *hereof* and *hereunder* and other words of similar import refer to this instrument as a whole and not to any particular Section or other subdivision.

(j) Except as otherwise indicated, all the agreements or instruments hereinafter defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

## **SECTION 2.     *Lease of Equipment***

In order to create a Lease, the Lessor, the Related Lessee and the Master Lessee shall execute and deliver a Related Lease Supplement, and the Lease created thereby shall be designated to differentiate such Lease from other Leases created pursuant to this Master Equipment Lease. Upon creation of a particular Lease and subject to the terms and conditions of such Lease, the Lessor agrees to lease to the Related Lessee, and the Related Lessee agrees to lease from the Lessor, such Items of Equipment as shall be described in one or more Certificates of Acceptance executed and delivered on behalf of the Lessor with respect thereto and as shall have been delivered and accepted by such Related Lessee and the Master Lessee under such Lease on or before the Final Delivery Date (*Leased Equipment*, and individually an *Item of Leased Equipment*). Upon delivery to the Lessor of each Item of Equipment specified in a particular Lease, the Related Lessee and the Master Lessee will cause an authorized representative of the Related Lessee to inspect the same and, if such Item of Equipment is found to be in good order and repair and in accordance with applicable specifications, to accept such Item of Equipment and to execute and deliver a Certificate of Acceptance with respect thereto, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Related Lessee and shall be subject to the terms and conditions of such Lease.

## **SECTION 3.     *Appointment of Authorized Representative***

For purposes of accepting delivery of each Item of Equipment with respect to a particular Lease, the Lessor by its execution and delivery of the Related Lease Supplement appoints one or more employees of the Related Lessee for such purposes only, who shall be so designated from time to time by the Related Lessee, as authorized representatives of the Lessor. Such authorized representatives shall thereby be authorized to take possession of such Equipment upon its delivery to the Related Lessee by the manufacturer or seller thereof, to accept on behalf of the Lessor all Related Purchase Documents, if any, delivered at such time with respect to such Equipment, to execute on behalf of the Lessor a Certificate of Acceptance with respect to such Equipment simultaneously with the execution thereof by the Related Lessee and the Master Lessee and to take such other action on behalf of the Lessor as shall be required to accept delivery of the Equipment set forth and described in such Certificate of Acceptance. The authority

granted to the Related Lessee pursuant to the provision of this Section 3 shall be subject to the provisions, if any, of the Related Participation Agreement relating to conditions to acceptance of Equipment.

#### **SECTION 4.     *Term and Rent***

(a) The term of a particular Lease as to each Item of Leased Equipment included in a Group of Equipment shall begin on the date of acceptance of such Items as set forth in the Certificate of Acceptance executed and delivered with respect thereto and shall end on the Expiration Date with respect to such Group of Equipment, unless such Lease shall have been terminated, or the term of such Lease with respect to such Group of Equipment shall have been extended, by the terms thereof.

(b) The Related Lessee shall pay to the Lessor as Basic Rent (herein referred to as *Basic Rent*) for each Item of Leased Equipment subject to a particular Lease, the following:

(1) on the Interim Rent Date, an amount equal to the Daily Lease Rate Factor, if any, multiplied by the Lessor's Cost of such Item, for each day elapsed from and including the Rent Commencement Date with respect to such Item to, but excluding, the Interim Rent Date;

(2) on the First Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item; and

(3) on each Basic Rent Date thereafter to and including the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item.

(c) The Related Lessee shall pay to the Lessor the following amounts (herein referred to as *Supplemental Rent* and, together with all Basic Rent, as *Rent*) with respect to a particular Lease:

(1) on demand, any amount payable thereunder (other than Basic Rent, Casualty Value and Termination Value, if any) which the Related Lessee assumes the obligation to pay, or agrees to pay, under such Lease to the Lessor or others;

(2) on the date provided therein, any amount payable thereunder as Casualty Value or Termination Value, if any; and

(3) to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Overdue Rate on any payment of Basic Rent, Casualty Value or Termination Value, if any, not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent (including, without limitation, interest payable under this clause (3), but excluding payments of Casualty Value or Termination Value, if any) not paid when demanded thereunder for the period from the date of such demand until the date on which the same shall be paid.

(d) Subject to paragraph (g) of Section 8 hereof, all payments of Rent under a particular Lease shall be made so that the Lessor shall have immediately available funds on the date payable thereunder, and shall be paid to the Lessor at its address set forth herein or at such other address as the Lessor may direct by notice in writing to the Related Lessee.

#### **SECTION 5.     *Net Lease***

Any Lease created pursuant to this Master Equipment Lease shall be a net lease and the Related Lessee acknowledges and agrees that the Related Lessee's obligation to pay all Rent under a particular Lease to which it is a party, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional



and shall not be affected by any circumstance including any abatement, reduction, set-off, deduction, suspension, deferment, diminution or other right, defense, counterclaim or recoupment (*Abatements*) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Related Lessee or the Master Lessee against the Lessor under such Lease or otherwise, or against the manufacturer or seller of any Item of Leased Equipment, any defect in title, condition, design, operation or fitness for use or existence of any liens, encumbrances or rights of others whatsoever against the Leased Equipment or against any Rents whether or not resulting from actions of the Related Lessee, insolvency, bankruptcy, reorganization or similar proceedings against the Master Lessee or Related Lessee, any failure by the Lessor, the Trustee or any Related Lender to comply with the Lease or any other agreement or business dealing with Master Lessee or Related Lessee, or acquisition by the Master Lessee or Related Lessee of ownership of all or part of the Lessor's interest in the Leased Equipment otherwise than as provided in such Lease. Except as otherwise expressly provided therein, a particular Lease shall not terminate, nor shall the respective obligations of the Lessor or the Related Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Leased Equipment or any Item thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of such Lease or lack of right, power or authority of the Lessor to enter into such Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding. It is the express intention of the Lessor and the Related Lessee that all Rent payable by the Related Lessee under a particular Lease shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of such Lease.

#### **SECTION 6.     *Return of Equipment***

Upon the termination of a particular Lease or the expiration of the term of such Lease as to a Group of Equipment, the Related Lessee, at its own expense, will return the Leased Equipment with respect to such Lease or with respect to such Group of Equipment, as the case may be, to the Lessor pursuant to the Lessor's instructions set forth under the heading *Return of Equipment* in Exhibit 2 to the Related Lease Supplement and in the condition in which the Leased Equipment is required to be maintained pursuant to Section 12 hereof. The Leased Equipment, upon being returned pursuant to a particular Lease, shall be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims (*Liens*), other than Liens which result from claims against the Lessor which do not result or arise from the failure of the Related Lessee to perform any of its obligations under such Lease (*Lessor's Liens*).

#### **SECTION 7.     *Representations and Warranties of the Lessor***

(a) With respect to a particular Lease, the Lessor represents and warrants to the Related Lessee and to the Master Lessee if the Master Lessee is not the Related Lessee that (1) on the date of acceptance of each Item of Equipment as set forth in the Certificate of Acceptance executed and delivered with respect thereto, it shall have received whatever title was conveyed to it by the manufacturer or seller of such Item of Leased Equipment referred to therein and that such Leased Equipment shall be free of Liens which may result from claims against the Lessor not related to the ownership of such Leased Equipment, and (2) during the term of such Lease, if no Event of Default has occurred, the Related Lessee's use of such Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied, to a Related Lessee and the Master Lessee with respect to a particular Lease or the Leased Equipment; and the Lessor shall not be deemed to have made, and the **LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OR OPERATION OF THE LEASED EQUIP-**

MENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LEASED EQUIPMENT OR CONFORMITY OF THE LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), but the Lessor authorizes the Related Lessee, at the Related Lessee's expense, to assert for the Lessor's account, during the term of such Lease, so long as no Event of Default shall have occurred thereunder and be continuing, all of the Lessor's rights under the manufacturer's or seller's warranty and the Lessor agrees to cooperate with the Related Lessee in asserting such rights; *provided, however,* that the Related Lessee shall indemnify and shall hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection therewith, as a result of, or incidental to, any action by the Related Lessee pursuant to the above authorization. Any amount received by the Lessor as payment under any such warranty shall be applied to restore the Leased Equipment to the condition required by Section 12 hereof, with the balance of such amount, if any, to be paid over to the Related Lessee.

#### **SECTION 8.     *Representations, Warranties and Covenants of the Related Lessee***

With respect to a particular Lease, the execution and delivery of the Related Lease Supplement by the Related Lessee will constitute the representation, warranty and covenant by it to the Lessor that:

(a) *Corporate Organization and Power.* Such Related Lessee is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, is duly qualified to do business in each jurisdiction, including each jurisdiction where any Item of Leased Equipment is, or is to be, located, where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under such Lease, the Related Participation Agreement and any other instrument contemplated hereby or thereby to which it is a party.

(b) *Execution and Delivery of Documents.* The execution, delivery and performance by such Related Lessee of such Lease, the Related Participation Agreement and any Related Purchase Documents and any other instrument contemplated hereby or thereby to which such Related Lessee is a party have been duly authorized by all necessary corporate action on the part of such Related Lessee, are not inconsistent with such Related Lessee's Certificate of Incorporation or By-Laws, do not contravene any law or governmental rule, regulation or order applicable to it, and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which such Related Lessee is a party or by which it or any of its properties is bound; such Lease, the Related Participation Agreement and such Related Purchase Documents and any other instrument contemplated hereby or thereby to which it is a party constitute legal, valid and binding agreements of such Related Lessee, enforceable in accordance with their respective terms. The Related Purchase Documents will be valid and effective to transfer, and will transfer, good title to the Equipment to the Lessor free and clear of all Liens except those permitted under such Lease.

(c) *Governmental Approvals.* No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery or performance by such Related Lessee of such Lease, the Related Participation Agreement or any Related Purchase Documents or the transactions contemplated thereby or, if any such approval, notice, registration or action is required, it has been obtained.

(d) *Litigation.* Except as set forth in Exhibit 2 to the Related Lease Supplement, there are no actions, suits or proceedings pending or, to the knowledge of such Related Lessee, threatened against or affecting such Related Lessee in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of such Related Lessee to perform its obligations under such Lease, the Related Participation Agreement or any Related Purchase Documents.

(e) *Condition of the Equipment, etc.* The Equipment is personal property and the Leased Equipment, when subjected to use by such Related Lessee under such Lease, will not be or become fixtures under applicable law. If and to the extent that the Leased Equipment, or any portion thereof, is identified in a Certificate of Acceptance executed and delivered under such Lease as new, such Leased Equipment will be new and unused on the date and at the time title thereto is to be acquired by the Lessor and will not have been put into use or operation by such Related Lessee prior to the date of acceptance set forth in such Certificate of Acceptance. The term of such Lease with respect to Items of Leased Equipment is not more than 80% of the useful life of such Items of Leased Equipment and all such Items of Leased Equipment will have a residual value of at least 20% of the Lessor's Cost at the end of such term.

(f) *Merger, Sale, etc.* Upon any consolidation or merger of such Related Lessee with or into any other corporation or corporations (whether or not affiliated with such Related Lessee or the Master Lessee), or successive consolidations or mergers in which such Related Lessee or its successor or successors shall be a party or parties, or upon any sale or conveyance of all or substantially all of the property of such Related Lessee to any other person, such Related Lessee will cause the due and punctual payment of all Rent and the due and punctual performance and observance of all covenants and obligations of such Related Lessee under such Lease and the Related Participation Agreement to be assumed by the corporation (if other than such Related Lessee) formed by such consolidation, or the corporation into which such Related Lessee shall have been merged or by the person which shall have acquired such property; provided that notwithstanding anything herein to the contrary if the Related Lessee is the Master Lessee paragraph (b)(v) of Section 9 hereof shall apply.

(g) *Consent to Assignment of the Lease.* Such Related Lessee acknowledges and consents to the assignment of such Lease by the Lessor to the Trustee under and pursuant to the Indenture and the Related Supplement and agrees

(i) to make all payments of Rent assigned thereby directly to the Trustee, and in such fashion so that the Trustee shall have immediately available funds on the date payable thereunder, so long as the Related Notes shall be outstanding and unpaid;

(ii) not to seek to recover any payment made to the Trustee pursuant to the Indenture and the Related Supplement once such payment is made;

(iii) that, so long as the Related Notes shall be outstanding and unpaid and no event which, after the giving of notice or lapse of time, or both, would mature into either an Event of Default or Related Event of Default (as defined in the Indenture) shall have occurred and be continuing, all rights of the Lessor shall be exercisable by the Trustee, as assignee and secured party, and the Lessor, jointly; otherwise, so long as the Related Notes shall be outstanding and unpaid, such rights shall be exercisable exclusively by the Trustee, as assignee and secured party; and

(iv) except as set forth in the Related Supplement, to execute and file, or to cause others within its control to execute and file, any financing statements, continuation statements or other documents necessary to create, perfect, protect and preserve the prior security interests to be acquired by the Trustee under the Indenture (including the Related Supplement) until all obligations with respect to all

Related Notes issued in connection with the transactions contemplated thereby shall have been fulfilled (it being understood no such recording or filing shall constitute an acknowledgment, or imply, that such Lease constitutes or creates a "security interest" within the meaning of any applicable Uniform Commercial Code).

**SECTION 9.     *Representations, Warranties and Covenants of the Master Lessee***

(a) With respect to a particular Lease, the execution and delivery of the Related Lease Supplement by the Master Lessee in its capacity as either the Related Lessee or the Master Lessee will constitute the representation, warranty and covenant by it to the Lessor that:

(i) *Financial Statements.* The consolidated balance sheet and statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) theretofore delivered to the Related Beneficiary and the Related Lender have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) on and as of the date thereof and the results of their operations for the period or periods covered thereby. Since the date of such consolidated balance sheet there has been no material adverse change in the financial condition of the Master Lessee or its consolidated subsidiaries (including each Related Lessee).

(ii) *Access to or Furnishing of Information.* If either the Related Beneficiary or the Related Lender shall so request, the Master Lessee agrees that, on or before the first Closing Date, each such party shall have access to, or the Master Lessee shall furnish to each such party, the same kind of information (including specifically information with respect to the Equipment) which an issuer of securities would be required to furnish to an offeree of such securities under paragraph (e) of Rule 146 adopted by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended. The Master Lessee also agrees to furnish to such parties and to the holder of any Related Note:

(1) within 120 days after the close of each fiscal year of the Master Lessee occurring after the date of such Lease, an audited consolidated balance sheet of the Master Lessee and its consolidated subsidiaries (including each Related Lessee), at and as of the end of such fiscal year, together with an audited consolidated statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) for such fiscal year;

(2) within 45 days after the close of each of the first three quarters of each fiscal year of the Master Lessee occurring after the date of such Lease, an unaudited balance sheet of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) at and as of the end of such quarter, together with an unaudited statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) for such quarter;

(3) within the period set forth in (1) above, a certificate of the chief financial officer of the Master Lessee and the Related Lessee stating that they have reviewed the activities of the Related Lessee and that, to the best of their knowledge, there exists no Event of Default, as such term is defined in such Lease, and no event which with the giving of notice or the lapse of time, or both, would become such an Event of Default;

(4) simultaneously with the distribution or mailing thereof, copies of all such financial statements or reports as the Master Lessee, or any of the consolidated subsidiaries (including each Related Lessee) of the Master Lessee, shall distribute or mail to its shareholders after the date of such Lease; and

(5) from time to time, such other information as any such party may reasonably request.

(iii) *Payment of Taxes.* The Master Lessee will pay and discharge, and cause the Related Lessee and each Substantial Subsidiary to pay and discharge, all taxes, assessments and governmental ~~properties~~ <sup>charges</sup> or levies imposed upon it or its income or profits or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any properties of Master Lessee, the Related Lessee or any Substantial Subsidiary, provided that neither the Master Lessee nor the Related Lessee nor any Substantial Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings.

(iv) *Compliance with Laws.* The Master Lessee will comply, and cause the Related Lessee and each Substantial Subsidiary to comply, with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, non-compliance with which would materially adversely affect its business or credit, except that the Master Lessee or the Related Lessee or any Substantial Subsidiary may in good faith and by proper proceedings contest any such law, rule, regulation or order so long as the business or credit of the Master Lessee, the Related Lessee or the Substantial Subsidiary, as the case may be, would not be materially adversely affected thereby.

(b) If the Master Lessee is not the Related Lessee with respect to a particular Lease, then upon the execution and delivery of the Related Lease Supplement by the Related Lessee the Master Lessee will co-execute the Related Lease Supplement and such co-execution will constitute the representation, warranty and covenant by the Master Lessee to the Lessor that:

(i) *Corporate Organization and Power; Ownership of Stock of Related Lessee.* The Master Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under such Lease and the Related Participation Agreement. The Master Lessee is the beneficial and record owner of at least 80% of the outstanding shares of capital stock having the power to elect a majority of the board of directors of the Related Lessee.

(ii) *Execution and Delivery of Documents.* The execution, delivery and performance by the Master Lessee of such Lease and the Related Participation Agreement and any other instrument contemplated hereby or thereby to which the Master Lessee is a party have been duly authorized by all necessary corporate action on the part of the Master Lessee, are not inconsistent with the Master Lessee's Certificate of Incorporation or By-Laws, do not contravene any law or governmental rule, regulation or order applicable to it, and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Master Lessee is a party or by which it or any of its properties is bound; such Lease and the Related Participation Agreement and any other instrument contemplated hereby or thereby to which it is a party constitute legal, valid and binding agreements of the Master Lessee, enforceable in accordance with their respective terms.

(iii) *Governmental Approvals.* No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery or performance by the Master Lessee of such Lease or the Related Participation Agreement or, if any such approval, notice, registration or action is required, it has been obtained.

(iv) *Litigation.* Except as set forth in Exhibit 2 to the Related Lease Supplement, there are no actions, suits or proceedings pending or, to the knowledge of the Master Lessee, threatened against or affecting the Master Lessee in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Master Lessee to perform its obligations under such Lease or the Related Participation Agreement.

(v) *Merger, Sale, etc.* The Master Lessee will not merge or consolidate with or into any other corporation or corporations (other than with or into a majority owned subsidiary of the Master Lessee) or sell or convey all or substantially all of the property of the Master Lessee to any other person (other than to a majority owned subsidiary of the Master Lessee) without the prior written consent of the Lessor; and notwithstanding anything herein to the contrary (including the assignment of such Lease by the Lessor to the Trustee) such consent shall be exercisable only by the Lessor. If there is such merger or consolidation with or into, or sale to, a majority owned subsidiary of the Master Lessee, the Master Lessee will cause the due and punctual performance and observance of all covenants and obligations of the Master Lessee under such Lease and the Related Participation Agreement to be assumed by such majority owned subsidiary (if other than the Master Lessee). The Master Lessee will not permit any individual, corporation, partnership, trustee or unincorporated organization (other than a subsidiary of the Master Lessee) to acquire beneficial interest in more than 40% of the outstanding voting securities of the Master Lessee.

(vi) *Guaranty.* The Master Lessee unconditionally guarantees the due and punctual payment by the Related Lessee, in accordance with the terms and provisions of such Lease, of any and all sums (including, but not limited to, all Rent, indemnities and interest) which are payable by the Related Lessee under such Lease, and in the event the Related Lessee shall fail to pay any such amounts, the Master Lessee will pay the same in accordance with such Lease. The agreement of guaranty contained in this clause (vi) is a continuing guarantee and shall remain in full force and effect until payment in full of all sums payable by the Related Lessee under such Lease and by the Master Lessee hereunder. The Master Lessee agrees that such agreement of guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of any sum hereby guaranteed is rescinded or must be otherwise restored or returned by the Lessor upon the insolvency, bankruptcy or reorganization of the Related Lessee, or otherwise, all as though such payment had not been made.

(vii) *Master Lessee's Obligations Not Affected.* The obligations of the Master Lessee under clause (vi) hereof shall remain in full force and effect without regard to, and shall not be impaired or affected by, any act or omission to act of any kind by the Lessor or any other person, or any other circumstances whatsoever which might constitute a legal or equitable discharge of a guarantor, including, but not limited to: (a) any waiver, consent, extension, indulgence, release, discharge, surrender, amendment, modification or assignment or other like action in respect of such Lease or any agreement relating thereto, (b) any exercise or nonexercise by the Lessor, the Trustee, the Related Lender, or Related Beneficiary or any assignee of any of them of any right, remedy, power or privilege under or in respect of the agreement of guaranty contained in clause (vi) hereof, such Lease or any agreement relating thereto, or any waiver of any such right, remedy, power or privilege, (c) any sale, transfer or other disposition by the Master Lessee of any shares of capital stock of the Related Lessee, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, or the like, of the Related Lessee, or (e) the invalidity, illegality or unenforceability of such Lease for any reason; it being the intention of the Master Lessee that the agreement of guaranty contained in clause (vi) hereof be absolute and unconditional in any and all circumstances and that such agreement of guaranty shall only be discharged by the irrevocable payment in full of all sums so guaranteed.

(viii) *Recovery against the Master Lessee; Waiver.* In the event of default by the Master Lessee under its agreement of guaranty contained in clause (vi) hereof, recovery may be had against the Master Lessee in any action, suit or proceeding without any requirement that the Lessor or any assignee of the Lessor first assert, prosecute or exhaust any right, power or remedy against the Related Lessee, its successors or assigns. The Master Lessee unconditionally waives acceptance of the agreement of guaranty contained in clause (vi) hereof and notice of any of the matters referred to in clause (vii) hereof, all other notices, demands and protests that may be required by statute, rule of law or otherwise to preserve the rights of the Lessor hereunder, and any requirement of diligence on the part of the Lessor.

#### **SECTION 10.           *Liens***

With respect to a particular Lease, the Related Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Leased Equipment, the Lessor's title thereto or any interest therein (and the Related Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (1) the respective rights of the Lessor and the Related Lessee as provided in such Lease, (2) Lessor's Liens, (3) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings do not, in the opinion of such counsel, adversely affect the title, property, or rights of the Lessor, (4) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Related Lessee and not delinquent, and (5) Liens granted by the Lessor to any assignee or security assignee of the Lessor. The Related Lessee will notify promptly the Lessor in writing of any such lien.

#### **SECTION 11.           *Taxes***

With respect to a particular Lease, the Related Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (*Impositions*), arising out of the transactions contemplated by such Lease and imposed against the Lessor, the Master Lessee, the Related Lessee or the Leased Equipment by any federal, state, local or foreign government or taxing authority upon or with respect to the Leased Equipment or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to such Lease (excluding, however, taxes on, or measured solely by, the net income of the Lessor) unless, and only to the extent that, the Related Lessee shall have given to the Lessor written notice of any such Imposition, which notice shall state that such Imposition is being contested by the Related Lessee in good faith and by appropriate proceedings and counsel for the Lessor shall have determined that the nonpayment thereof or the contest thereof in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor. Upon termination of such proceedings prior to a determination therein or upon a determination therein adverse to the Lessor or upon the happening of any event whereby the Lessor is required to pay such Imposition, the Related Lessee agrees to pay and to indemnify the Lessor for such Imposition. In case any report or return is required to be made with respect to any obligation of the Related Lessee under this Section or arising out of this Section, the Related Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Leased Equipment in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Related Lessee in the preparation of any such report or return. All amounts payable to the Lessor under this Section shall be computed on an "after-tax" basis so that such payments shall be in an amount which, when reduced by the

income tax liability or liabilities of the recipient or any other party as a result of such payment by the Related Lessee, shall equal the after-tax cost of the Imposition.

## SECTION 12.

### *Use, Maintenance and Operation, Identifying Marks*

(a) With respect to a particular Lease, the Related Lessee agrees that the Leased Equipment will be used in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency and any insurance policies applicable to the use of the Leased Equipment, and, subject to the provisions of Section 17 hereof, will at all times be used solely in the conduct of its business and be and remain in the possession and control of the Related Lessee or any 80% owned subsidiary of the Master Lessee at the location designated in the Related Lease Supplement, or if not so designated, at the location of its acceptance set forth in the Certificate of Acceptance with respect to each Item of Equipment or at such other location to which the Lessor shall give prior written consent, which consent shall not be unreasonably withheld. Throughout the term of such Lease, the possession, use and maintenance of the Leased Equipment shall be at the sole risk and expense of the Related Lessee. Throughout the term of such Lease the Related Lessee will obtain and keep in effect all licenses and permits required to be obtained with respect to the Leased Equipment.

(b) With respect to a particular Lease, the Related Lessee, at its own cost and expense, will repair and maintain the Leased Equipment so as to keep it in as good condition as warranted by the manufacturer or seller and as required by the Related Lessee's specifications as when accepted by the Related Lessee under such Lease, ordinary wear and tear excepted. Any replacement made by the Related Lessee upon an Item of Lease Equipment in connection with repairing such Item shall have a value and utility at least equal to the value of such part being replaced, assuming such replaced part to be in good operating order and shall be considered an accession to such Item, and title to such replacement part shall vest in the Lessor. Title of the original part so replaced in connection with said repairing of such Item shall thereupon vest in the Related Lessee.

(c) With respect to a particular Lease, the Related Lessee will not, without the prior written consent of the Lessor, affix or install any accessory, equipment, or device on any Item of Leased Equipment leased thereunder which will impair the originally intended function or use of any such Item. Any accessory, equipment, or device so installed shall, without necessity of further act, become part of the Leased Equipment and the property of the Lessor; *provided, however*, that so long as no Event of Default under such Lease shall have occurred and be continuing, any such accessory, equipment, or device not installed as a replacement on any Item of Leased Equipment may be removed (so long as such removal can be accomplished without damage to any Item of Leased Equipment) by the Related Lessee, at its own expense and risk, at any time during, or at the expiration of, such Lease, whereupon such accessory, equipment, or device shall, without necessity of further act, become the property of the Related Lessee. Notwithstanding the foregoing, the Related Lessee shall not, without the prior written consent of the Lessor make any changes to, or otherwise alter or improve, any Item of Leased Equipment in a manner which would constitute an improvement or addition to such Item of Leased Equipment which is not readily removable without causing material damage to such Item of Leased Equipment within the meaning of Rev. Proc. 75-21 promulgated by the Internal Revenue Service or other similar procedure then in effect. The Related Lessee will not, without the prior written consent of the Lessor and subject to such conditions as the Lessor may impose for its protection, affix any Item of Leased Equipment to any real property if, as a result thereof, any such Item will become a fixture under applicable law.

(d) With respect to a particular Lease, the Related Lessee agrees, at its own cost and expense, to (1) cause each Item of Leased Equipment to be kept numbered with the identification or serial number therefor as specified in the Certificate of Acceptance therefor and (2) maintain the marking on each Item of



Leased Equipment as shall be set forth under the heading *Marking of Equipment* in Exhibit 2 to the Related Lease Supplement and as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Item of Leased Equipment, the rights of the Lessor under such Lease and the Lien granted by the Lessor in financing the Lessor's Cost of the Leased Equipment. The Related Lessee will not place any Item of Leased Equipment in operation or exercise any control or dominion over the same until such marking has been placed thereon. The Related Lessee will replace promptly any such marking which may be removed, defaced or destroyed. The Related Lessee may cause the Leased Equipment to be lettered with the names, initials or other insignia customarily used by the Related Lessee on equipment used by it of the same or similar type for convenience of identification.

### **SECTION 13.    *Inspection***

The Lessor shall have the right, but not the duty, to inspect the Leased Equipment with respect to a particular Lease. Upon the request of the Lessor, the Related Lessee shall confirm to the Lessor the location of each Item of Leased Equipment and shall, at any reasonable time, make the Leased Equipment, and the Related Lessee's records pertaining to the Leased Equipment, available to the Lessor for inspection.

### **SECTION 14.    *Loss or Destruction; Requisition***

(a) In the event any Item of Leased Equipment is physically damaged to a material extent by any occurrence whatsoever, the Related Lessee shall promptly notify the Lessor and shall determine within 15 days of the date of such notice whether such Item of Leased Equipment can be repaired.

(b) In the event any Item of Leased Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (*Requisition of Use*) for a stated period which exceeds the term of a particular Lease (any such occurrence being referred to as an *Event of Loss*), the Related Lessee shall promptly notify the Lessor and pay to the Lessor, on the next rent payment date for such Item following such Event of Loss, an amount equal to the Casualty Value of such Item on such rent payment date. Any installment of Basic Rent with respect to such Item due on such rent payment date shall remain due and payable. After the payment of such Casualty Value and all Rent due and owing with respect to such Item as of such payment date, the Related Lessee's obligation to pay further Basic Rent for such Item shall cease, but the Related Lessee's obligation to pay Supplemental Rent, if any, for such Item of Leased Equipment, and to pay Rent for all other Items of Leased Equipment shall remain unchanged. Except in the case of loss, theft, destruction or a Requisition of Use, after the payment of such Casualty Value the Lessor will be entitled to recover possession of each Item of Leased Equipment suffering an Event of Loss.

(c) Following payment of the Casualty Value of an Item of Leased Equipment in accordance with the provisions of paragraph (b) of this Section, the Related Lessee shall either purchase such Item for an amount equal to the Fair Market Value thereof (as such term is hereinafter defined) or, as agent for the Lessor, dispose of such Item as soon as it is able to do so for the best price obtainable. Any such purchase or disposition shall be on an *as is, where is* basis without representation or warranty, express or implied. As to each separate Item so purchased or disposed of, the Related Lessee may, after paying the Lessor the amounts specified in such paragraph (b), retain all amounts of such price up to the Casualty Value and the Related Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor.

(d) In the case of a Requisition of Use for an indefinite period or for a stated period which does not exceed the term of a particular Lease, such Requisition of Use shall not terminate such Lease and each and every obligation of the Related Lessee with respect thereto shall remain in full force and effect. So long

as no Event of Default shall have occurred and be continuing under such Lease, the Lessor shall pay the Related Lessee all sums received by the Lessor by reason of any such Requisition of Use, up to the amount of the Basic Rent paid by the Related Lessee during the period of such Requisition of Use.

(e) *Fair Market Value* shall be determined on the basis of, and shall mean the aggregate amount which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (1) a lessee currently in possession, or (2) a used equipment dealer) and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Items, shall be taken into account in making such determination. If the Lessor and the Related Lessee are unable to agree upon a determination of Fair Market Value with respect to a particular Item of Leased Equipment, such Fair Market Value shall be determined in accordance with the procedure for Appraisal as described in paragraph (f) of this Section.

(f) *Appraisal* shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of such Items, one chosen by the Related Lessee and one by the Lessor, shall mutually agree upon the amount in question. The Lessor or the Related Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 Business Days after receipt from the other party of a written notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be a manufacturer of such Items, shall be chosen within five Business Days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 10 Business Days after the selection of such third appraiser and such decision shall be binding and conclusive on the Lessor and the Related Lessee. The Lessor and the Related Lessee shall pay the fees and expenses of the respective appraisers appointed by them and shall share equally the fees and expenses of the third appraiser, if any.

#### **SECTION 15. Insurance**

At its own expense, the Related Lessee of a particular Lease will cause to be carried and maintained casualty insurance with respect to each Item of Leased Equipment and public liability insurance, in each case in amounts and against risks customarily insured against by the Related Lessee on similar equipment and, in any event, in amounts and against risks comparable to those insured against by the Related Lessee on equipment owned by it. If requested by the Lessor, all policies with respect to such insurance shall name the Lessor, the Trustee (as assignee and secured party) and the Related Lessee as assureds and loss payees, as their interests may appear, and shall provide for at least 10 days' prior written notice by the underwriter or insurance company to the Lessor in the event of cancellation or expiration. The Related Lessee shall, upon request of the Lessor, furnish appropriate evidence of such insurance.

#### **SECTION 16. Indemnification**

With respect to a particular Lease, the Related Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against, any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (*Claims*) which may be imposed on, incurred or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of such Lease, the Related Purchase Documents, the Related Participation Agreement, the Indenture or any other document contemplated hereby or thereby, or

the performance or enforcement of any of the terms hereof and thereof, or the Related Trust Estate (as defined in the Master Trust Agreement) or the failure of the Indenture to create a valid first lien and security interest on and in the Related Estate (as defined in the Indenture), or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, repair, sale, return, storage or disposition of or defect in or failure of title to any Item of Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); *provided, however*, that the Related Lessee shall not be required to indemnify the Lessor for (1) any Claim in respect of any Item of Leased Equipment arising from acts or events which occur after full and final compliance by the Related Lessee with all the terms of such Lease with respect to such Item, or (2) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. The Related Lessee agrees that the Lessor shall be not liable to the Related Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of the Related Lessee. The rights and indemnities of the Lessor under such Lease are expressly made for the benefit of, and shall be enforceable by, the Lessor notwithstanding the fact that the Lessor is either no longer a party to such Lease, or was not a party to such Lease at its outset.

#### **SECTION 17.   *Sublease***

With respect to a particular Lease, the Related Lessee will not, without the prior written consent of the Lessor, which consent will not be unreasonably withheld, sublet or otherwise relinquish possession of the Leased Equipment or assign any of its rights thereunder, except that such Lease may be assigned, without the written consent of the Lessor, to the Master Lessee or to any subsidiary of the Master Lessee if at the time of such assignment the Master Lessee is the beneficial owner of 80% or more of the outstanding shares of capital stock of such subsidiary. No sublease, other relinquishment of the possession of the Leased Equipment or assignment by the Related Lessee of any of its rights thereunder shall in any way discharge or diminish any of the Master Lessee's or the Related Lessee's obligations to the Lessor thereunder. Any such assignee shall expressly agree to be bound by the terms of such Lease.

#### **SECTION 18.   *Events of Default***

The term *Event of Default*, wherever used herein, shall mean any of the following events under a particular Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Related Lessee shall fail to make any payment of Rent when due and such failure shall continue for 2 days after written or electronic notice thereof from the Lessor to the Related Lessee; or

(b) The Related Lessee or the Master Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under such Lease or any document or certificate delivered by either the Related Lessee or the Master Lessee in connection therewith, and such failure shall continue for 20 days after written notice thereof from the Lessor to the Related Lessee or to the Master Lessee, as the case may be; or

(c) Any representation or warranty made by either the Related Lessee or the Master Lessee in such Lease or in any document or certificate furnished in connection therewith or pursuant thereto shall prove to have been incorrect in any material respect when any such representation or warranty was made or given or any opinion of counsel furnished by counsel to the Related Lessee or the Master Lessee in connection therewith or pursuant thereto shall prove to be incorrect in any material respect as of the date thereof; or

(d) A petition in bankruptcy shall be filed by either the Master Lessee or the Related Lessee or a Substantial Subsidiary, or the Master Lessee or the Related Lessee or a Substantial Subsidiary shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for the Master Lessee or the Related Lessee or a Substantial Subsidiary, for any part of the Leased Equipment or for a substantial part of the property of either the Master Lessee or the Related Lessee or a Substantial Subsidiary without its consent and shall not be dismissed within a period of 60 days; by order or decree of a court of competent jurisdiction the Master Lessee or the Related Lessee or a Substantial Subsidiary shall be adjudicated insolvent or bankrupt; or bankruptcy, reorganization or insolvency proceedings shall be instituted against the Master Lessee or the Related Lessee or a Substantial Subsidiary and shall not be dismissed for a period of 60 days; or

(e) The Master Lessee or the Related Lessee or a Substantial Subsidiary shall be in default under any obligation (other than any obligation in an aggregate principal amount of less than \$100,000) for the payment of borrowed money or for the deferred purchase price of, or for the payment of any rent under any lease agreement covering, material real or personal property, and the applicable grace period with respect thereto shall have expired and the obligations shall not be contested in good faith (for the purposes of this Master Equipment Lease, any Lease created hereunder shall be deemed a lease covering material personal property); or

(f) The Related Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet (except as expressly permitted by the provisions of such Lease) the Leased Equipment or any Item of Leased Equipment.

#### **SECTION 19. Remedies**

(a) Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare the particular Lease to be in default by written notice to such effect given to the Related Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(1) Proceed by appropriate court action, either at law or in equity, to enforce performance by the Master Lessee or the Related Lessee of the applicable covenants of such Lease or to recover damages for the breach thereof;

(2) By notice in writing terminate such Lease, whereupon all rights of the Related Lessee to the use of the Leased Equipment shall absolutely cease and terminate but the Related Lessee shall remain liable as hereinafter provided; and thereupon the Related Lessee, if so requested by the Lessor, shall at its expense promptly return the Leased Equipment to the possession of the Lessor at the location where the Leased Equipment is in last use and in the condition required upon the return thereof pursuant to and in accordance with the terms of such Lease, or the Lessor, at its option, may enter upon the premises where the Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. Any such entry shall be without liability to the Related Lessee, the Master Lessee or any user of the Leased Equipment for or by reason of such entry or taking of possession, whether for restoration of damages to property damaged by such taking or otherwise.

The Related Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared such Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Leased Equipment, computed as of the Basic Rent Date following the date on which the Lessor has declared such Lease to be in default. Following the return of the Leased Equipment to the Lessor pursuant to this paragraph (2), the Lessor shall sell the Leased Equipment in such manner as it shall deem appropriate. The Related Lessee hereby waives, to the extent permitted by law, any right requiring sale or marshalling of assets. The proceeds of such sale shall be applied by the Lessor (A) *first*, to all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, and (B) *second*, to reimburse the Related Lessee for the Casualty Value to the extent previously paid by the Related Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that the Casualty Value has not been previously paid, the Related Lessee shall forthwith pay to the Lessor the sum of (i) the amount by which (X) the sum of (a) the Casualty Value thereof, and (b) the amount payable under clause (A) of the preceding sentence to the extent not previously paid, exceeds (Y) the sale price of the Leased Equipment, and (ii) interest at the Overdue Rate on the full amount of the Casualty Value, computed from the date the Casualty Value is payable hereunder until such Casualty Value is paid by the Related Lessee.

(b) The Related Lessee of a particular Lease shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor or the Related Beneficiary by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default under a particular Lease shall in any way be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

## **SECTION 20.   *Lease Extension***

(a) Provided that a particular Lease has not been terminated and provided that no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing thereunder, the Related Lessee shall have the option to extend the term of such Lease with respect to all, but not less than all, Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group for one or more consecutive Lease Extension Periods for a rental equal to the Fair Market Rental Value thereof, determined as of the end of such term.

(b) Not less than 180 days prior to the end of the term of a particular Lease with respect to such Group, the Related Lessee may indicate, by written notice to the Lessor, the Related Lessee's interest in exercising the Related Lessee's lease extension option described above, which notice shall set forth the Related Lessee's estimate of the Fair Market Rental Value of the Items of Leased Equipment included in such Group as of the end of such term. If, on or before a date 135 days prior to the expiration of the term thereof, the Lessor and the Related Lessee are unable to agree upon a determination of the the Fair Market

Rental Value of such Group, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal as described in paragraph (f) of Section 14 hereto. After a determination of the Fair Market Rental Value of such Group has been made in accordance with the procedure described above, the Related Lessee may exercise its option to extend the term of such Lease with respect to such Group for the Fair Market Rental Value thereof by delivering written notice of such exercise to the Lessor not less than 75 days prior to the expiration of the term of such Lease.

(c) *Fair Market Rental Value* shall be determined on the basis of, and shall mean the aggregate amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease.

## **SECTION 21.   *Purchase Option***

(a) Provided that a particular Lease has not been terminated and provided that no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing thereunder, the Related Lessee shall have the option to purchase all, but not less than all, Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group for a purchase price equal to the Fair Market Value thereof, as defined in Section 14(e), determined as of the end of such term.

(b) Not less than 180 days prior to the end of the term of such Lease with respect to such Group, the Related Lessee may indicate, by written notice to the Lessor, the Related Lessee's interest in exercising the Related Lessee's purchase option described above, which notice shall set forth the Related Lessee's estimate of the Fair Market Value of the Items of Leased Equipment included in such Group as of the end of such term. If, on or before a date 135 days prior to the expiration of the term thereof, the Lessor and the Related Lessee are unable to agree upon a determination of the Fair Market Value of such Group, such Fair Market Value shall be determined in accordance with the procedure for Appraisal as described in Section 14(f) hereof. After a determination of the Fair Market Value of such Group has been made in accordance with the procedure described above, the Related Lessee may exercise its option to purchase such Group for the Fair Market Value thereof by delivering written notice of such exercise to the Lessor not less than 75 days prior to the expiration of the term of such Lease.

(c) In the event the Related Lessee exercises such option to purchase the Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group, then, upon payment of the purchase price, the Lessor shall, upon request of the Related Lessee, execute and deliver to the Related Lessee, or to the Related Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Items of Leased Equipment of such Group are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for the Items of Leased Equipment of such Group, and such other documents as may be required to release the Items of Leased Equipment of such Group from the terms and scope of such Lease and to transfer title thereto to the Related Lessee or such assignee or nominee, in such form as may reasonably be requested by the Related Lessee, all at the Related Lessee's expense.

## **SECTION 22.   *Voluntary Termination.***

(a) So long as no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default shall have occurred and be continuing under a particular Lease, the Related Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days prior written notice to the Lessor, to terminate such Lease on any Basic Rent Date thereafter with respect to all, but not less than all, Items of Leased Equipment included in a Group of Equipment if they shall have become obsolete or surplus to the Related Lessee's requirements. Such termination shall be

effective on the Basic Rent Date specified in such notice (hereinafter called the *Termination Date*). During the period from the giving of such notice until the Termination Date, the Related Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of such Items of Leased Equipment; the Related Lessee shall certify to the Lessor in writing the amount of each bid received by the Related Lessee and the name and address of the party (who shall not be the Related Lessee or any person, firm or corporation affiliated with the Related Lessee) submitting such bid. On the Termination Date, the Lessor shall with the written consent of the Related Lessee sell such Items of Leased Equipment without recourse or warranty, for cash, to whomsoever shall have submitted the highest bid prior to such date, and thereupon the Related Lessee shall deliver such Items of Leased Equipment so sold to the purchaser in the condition specified in such Lease. If no sale of such Items of Leased Equipment takes place on the Termination Date, such Lease shall continue in full force and effect as to such Items of Leased Equipment.

(b) The total sale price realized at any such sale shall be retained by the Lessor, and, in addition, the Related Lessee shall pay to the Lessor the amount of Basic Rent due on such Basic Rent Date, plus the excess, if any, of (A) the Termination Value for such Items of Leased Equipment, over (B) the proceeds of such sale less all expenses incurred by the Lessor in connection with such sale or with the collection or distribution of such payment. The obligation of the Related Lessee to pay Basic Rent with respect to such Items of Leased Equipment (including the installment of Basic Rent due on the Termination Date) shall continue undiminished until payment of the sale proceeds and all or any portion of the Termination Value, if any, payable to the Lessor under such Lease with respect to such Items of Leased Equipment. Upon the receipt of such payment the obligation of the Related Lessee to pay Basic Rent under such Lease with respect to such Items of Leased Equipment shall cease. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Related Lessee to obtain bids, or otherwise to take any action in connection with any such sale, other than as expressly provided herein.

### SECTION 23. *Tax Indemnification*

(a) Each Lease created pursuant to this Master Equipment Lease is to be entered into on the basis that for federal income tax purposes (and to the extent allowable for state and local tax purposes), the Lessor (or the consolidated federal taxpayer group of which the Lessor is a part) intends:

(1) to take the investment tax credit allowed by section 38 and related sections of the Internal Revenue Code of 1954, as amended (*Code*), in an amount equal to the percentage of Lessor's Cost of the Items of Leased Equipment set forth in Exhibit 2 to the Related Lease Supplement (*Investment Tax Credit*);

(2) to deduct accelerated depreciation on the Leased Equipment under section 167(b) of the Code based upon the depreciable life, salvage value and depreciation method set forth in Exhibit 2 to the Related Lease Supplement (*Depreciation Deduction*);

(3) to deduct under section 163 of the Code the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to any indebtedness incurred by the Lessor in financing its purchase of the Leased Equipment (*Interest Deduction*);

(4) to treat any loss on the sale or other disposition of all or any part of the Leased Equipment, other than a sale or other disposition at or after the end of the term of such Lease or a voluntary transfer of all or a part of the Leased Equipment while no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing under such Lease, to be deductible in full as an ordinary loss (*Ordinary Loss Deduction*);

(5) to realize as gross income with respect to the transactions contemplated by such Lease, including, without limitation, any sale or other disposition of all or any portion of the Leased Equipment (other than a sale at or after the end of the term of such Lease or a voluntary transfer of any interest in the Leased Equipment by the Lessor while no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing under such Lease) only (A) the Basic Rent payments accrued in the amounts and at the time specified in Section 4 of the Master Equipment Lease and interest thereon, (B) payments pursuant to this Section, Section 11, Section 16 and Section 20 of the Master Equipment Lease and interest thereon, and (C) payments of Casualty Value or Termination Value under Section 14 or Section 22 of the Master Equipment Lease; and

(6) not to recapture any Investment Tax Credit for any reason, including by reason of any replacement, alterations, modifications and/or additions to the Leased Equipment made by Related Lessee or any other party, pursuant to such Lease or otherwise.

(b) The Lessor in its capacity as trustee intends not to be subject to any taxes, fees or other charges imposed by any federal, state or local government or taxing authority which are based on net income or items of tax preference (or any such taxes, fees or other charges which are based on or measured by gross income or gross receipts which may be imposed as a substitute for or in relief of (and not in addition to) taxes based on or measured by net income) as a result of its participation in its capacity as trustee in the transactions contemplated by the Indenture, the Related Participation Agreement or such Lease, except any taxes, fees or other charges which are based upon, or measured by, compensation received by the Lessor for its service as trustee.

(c) If for any reason the Lessor shall not have or shall lose the right to claim, or if there shall be a disallowance, elimination, reduction, nonrealization or disqualification in whole or in part with respect to the Lessor, of (i) the Investment Tax Credit (*Loss of Investment Tax Credit*), (ii) the Depreciation Deduction (*Loss of Depreciation Deduction*), (iii) the Interest Deduction (*Loss of Interest Deduction*) or (iv) the Ordinary Loss Deduction (*Loss of Ordinary Loss Deduction*) (collectively referred to as a *Loss*), or if for any reason the Lessor shall be required to include in gross income with respect to such Lease or any transactions therein contemplated any amount other than those amounts referred to in paragraph (a)(5) of this Section (*Additional Inclusion*), or if the Lessor shall be required to recapture any Investment Tax Credit at any time during the term of such Lease other than as a result of events which require the payment of Casualty Value or Termination Value under Section 14 or Section 22 of the Master Equipment Lease (*Recapture*), the Related Lessee shall pay to the Lessor an amount sufficient, after deducting any taxes payable thereon or with respect thereto, to compensate the Lessor for the additional income tax liability thereby incurred.

The amount to be paid by the Related Lessee to the Lessor on account of any Loss, Additional Inclusion or Recapture shall be an amount equal to the sum of (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the sum of the amount of the additional income tax liability incurred by reason of the Loss, Additional Inclusion or Recapture and the amount of any interest and Additions to Tax payable by the Lessor as a result of such Loss, Additional Inclusion or Recapture which do not reduce the Lessor's federal, state and local income tax payments in the year paid or accrued, plus (ii) the amount of any interest and any Additions to Tax payable by the Lessor as a result of such Loss, Additional Inclusion or Recapture which reduce the Lessor's federal, state and local income tax payments in the year paid or accrued. (For purposes of such Lease, *Additions to Tax* shall mean those penalties imposed under federal, state and local income tax laws and those payments described in sections 6651(a)(3), 6653, 6655 of the Code and corresponding provisions of the state and local income tax laws, but



only if such penalties are imposed or such payments, other than payments under section 6655, are required, as the result of an act or failure to act of Related Lessee.)

(d) If for any reason the Lessor in its capacity as trustee shall be required to pay any taxes, fees or other charges (including interest, penalties and Additions to Tax thereon) imposed by any federal, state or local government or taxing authority, other than those taxes, fees or other charges excepted in paragraph (b) of this Section, as a result of its participation in its capacity as trustee in the transactions contemplated by the Indenture, the Related Participation Agreement or such Lease (*Lessor's Taxes*), the Related Lessee shall pay to the Lessor an amount equal to the sum of (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the amount of such Lessor's Taxes plus any interest and Additions to Tax payable by the Lessor as a result of the imposition of the Lessor's Taxes which do not reduce the Lessor's federal, state and local income tax payments of the Lessor in the year paid or accrued, plus (ii) the amount of any interest and Additions to Tax payable by the Lessor as a result of the imposition of the Lessor's Taxes which reduce the Lessor's federal, state and local income tax payments in the year paid or accrued.

(e) If the Lessor claims payment under this Section on account of any Loss, an Additional Inclusion or a Recapture (collectively referred to as a *Loss of Tax Benefits*), or if the Lessor claims payment under this Section on account of the imposition of Lessor's Taxes, the Lessor shall provide the Related Lessee with a written notice of such claim, which notice shall be accompanied by a statement describing in detail the Loss of Tax Benefits or Lessor's Taxes and setting forth the computation of the amount(s) so payable. The amount(s) payable to the Lessor shall be paid on or prior to the later of (i) the date that the Lessor (or the consolidated federal taxpayer group of which the Lessor is a part) shall pay the tax increase resulting from such Loss of Tax Benefits or the Lessor's Taxes (or suffers a reduction in the amount of any refund which the Lessor would have been entitled to receive but for the Loss of Tax Benefits or the Lessor's Taxes) or (ii) 30 days after the date of the notice described in this Section.

(f) If the event which results in a Loss of Tax Benefits for which an amount has been paid pursuant to this Section has the effect of reducing the Lessor's tax liability, including without limitation a reduction in the tax liability of the Lessor which results from a disposition of any interest in the Leased Equipment, the Lessor shall pay to the Related Lessee within 30 days after the Lessor has filed its income tax return for the year in which its tax payments have been reduced the sum of (i) the amount by which the Lessor's tax liability has been reduced as a result of such Loss of Tax Benefits, and (ii) the reduction in tax payments attributable to the deduction of the amount described in clause (i) of this sentence.

(g) The Lessor shall not be entitled to a payment under this Section on account of any Loss of Tax Benefits which would not have occurred but for one or more of the following events: (i) a disposition of the Leased Equipment or such Lease by the Lessor other than pursuant to its rights under Section 19 of the Master Equipment Lease, or (ii) a failure of the Lessor to timely or properly claim the Investment Tax Credit, Depreciation Deduction, Interest Deduction or Ordinary Loss Deduction for the Item or Items of Leased Equipment in its tax return (or the consolidated federal taxpayer group of which the Lessor is a part), if such failure is the result of the Lessor's negligence, or (iii) a disqualifying change in the nature of the business of the Lessor or the liquidation thereof, (iv) a foreclosure by any person holding through the Lessor of a lien on the Item or Items of Leased Equipment, which foreclosure results solely from an act of the Lessor, or (v) any event which by the terms of such Lease requires payment by the Related Lessee of the Casualty Value or Termination Value, if such Casualty Value or Termination Value is thereafter actually paid by the Related Lessee, and then only to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Related Lessee pursuant to this Section, or (vi) the failure of the Lessor to have sufficient liability for federal income tax against which to credit the Investment Tax Credit or sufficient

income to benefit from the Depreciation Deduction, Interest Deduction or Ordinary Loss Deduction which constitute the Loss of Tax Benefits.

#### **SECTION 24.   *Notices***

All communications and notices provided for in a particular Lease shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail prepaid, addressed as follows: (1) if to the Lessor, at P.O. Box 30007, Salt Lake City, Utah 84125, Attention: Trust Department, Corporate Division (with copies to (A) Itel Leasing Corporation at One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, (B) United States Trust Company of New York, as Trustee, at 130 John Street, New York, New York 10038, Attention: Corporate Trust and Agency Division, and (C) the Related Beneficiary, at its address specified in the Related Participation Agreement), (2) if to the Related Lessee, c/o the Master Lessee at Master Lessee's address set forth below, and (3) if to the Master Lessee, at 114 West 11th Street, Kansas City, Missouri 64105, Attention: General Counsel, or at such other address as any such party may from time to time designate by notice duly given in accordance with this Section to each other party.

#### **SECTION 25.   *Amendments and Miscellaneous***

(a) The terms of a particular Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor, the Related Lessee and the Master Lessee, *provided that* no such waiver, alteration, modification, amendment or supplement shall make any change with respect to such Lease, and no termination shall be made, which is prohibited by the Indenture, as implemented by the Related Supplement. The terms of this Master Equipment Lease may be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever by a written instrument signed by the Lessor and the Master Lessee, subject to the proviso contained in the immediately preceding sentence, to the extent such waiver, alteration, modification, amendment, supplement or termination affects a particular Lease.

(b) A particular Lease (including all agreements, covenants, representations and warranties) shall be binding upon and inure to the benefit of the Lessor and its successors, assigns, agents, servants and personal representatives and, where the context so requires, any Related Beneficiary and the Trustee (as assignee and secured party) and the successors, assigns, agents, servants and personal representatives of any Related Beneficiary or the Trustee (as assignee and secured party), and the Related Lessee and the Master Lessee and their successors and, to the extent permitted thereby, assigns. With respect to the provisions of Sections 7, 11, 16 and 23 hereof, any Related Beneficiary, the Trustee (as assignee and secured party), any holder of obligations of the Lessor issued in connection with such Lease and the successors, assigns, agents, servants and personal representatives of the foregoing and of the Lessor, and any corporation controlling, controlled by or under common control with any Related Beneficiary, the Trustee (as assignee and secured party), any holder of obligations of the Lessor issued in connection with such Lease and the Lessor shall each be indemnified thereunder and, with respect to clause (2) of the proviso to Section 16 hereof, the willful misconduct or gross negligence of any one such person shall not affect the rights of any other such person under such Section. All payments of indemnity hereunder shall be paid directly to the party entitled to such indemnification payments.

(c) All agreements, representations and warranties contained in a particular Lease or in any document or certificate delivered pursuant thereto or in connection therewith shall survive the execution and delivery of such Lease and the expiration or other termination of such Lease.

(d) Any provision of a particular Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Master Lessee and the Related Lessee hereby waive any provision of law which renders any provision thereof prohibited or unenforceable in any respect.

(e) A particular Lease shall constitute an agreement of lease and nothing therein shall be construed as conveying to either the Master Lessee or the Related Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(f) The single executed original of the Related Lease Supplement marked *Original* (together with a conformed copy of this Master Equipment Lease) shall be the *Original* of a particular Lease and all other counterparts thereof shall be marked and be *Duplicates*. To the extent that a particular Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in such Lease may be created through the transfer or possession of any counterpart other than the *Original* of such Lease.

(g) This Master Equipment Lease and any Lease Supplement may be executed in any number of counterparts and by the different parties hereto or thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to and retained by the Lessor and the Master Lessee, respectively.

(h) Each Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

(i) The headings of the sections of this Master Equipment Lease have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the Lessor and the Master Lessee have each caused this Master Equipment Lease to be duly executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

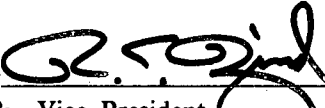
**FIRST SECURITY BANK OF UTAH, N.A.**  
and **THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely as Owner  
Trustees under a Master Trust Agreement  
dated as of May 1, 1975 between the Owner  
Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976,  
as *Lessor*

By **FIRST SECURITY BANK OF UTAH, N.A.**,  
not in its individual capacity, but solely as  
Corporate Trustee and on behalf of the Individual

Trustee,  
as *Corporate Trustee*

By \_\_\_\_\_  
Authorized Officer

KANSAS CITY SOUTHERN INDUSTRIES, INC.,  
as *Master Lessee*

By  \_\_\_\_\_  
S. Vice President

**EXHIBIT A**  
**to Master Equipment Lease**

**CERTIFICATE OF ACCEPTANCE NO. —**

*under*

**KANSAS CITY SOUTHERN INC. [Year of Creation of Lease] Equipment Lease No. \_\_\_\_\_ (the *Lease*)** between **FIRST SECURITY BANK OF UTAH, N.A.** and **THOMAS C. CUTHBERT**, not in their individual capacities, but solely as Owner Trustees under a Master Trust Agreement dated as of May 1, 1975 between the Owner Trustees and IteL Leasing Corporation as lessor (the *Lessor*) and as amended as of October 1, 1976, the corporation named on the signature page hereof as "*Lessee*" (the *Lessee*) and **KANSAS CITY SOUTHERN INDUSTRIES, INC.** (the *Master Lessee*).

**1.   *Items of Equipment***

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, tested and inspected by the Lessee, found to be in good order and repair and in accordance with specifications and accepted as Items of Equipment under the Lease, all on the date indicated below:

*Group of Equipment:*

*Location of Items of  
Equipment:*

*Date of Acceptance:*

**2.   *Representations by the Lessee and the Master Lessee***

The Lessee and the Master Lessee hereby represent and warrant to the Lessor, any Related Beneficiary, the Trustee and any Related Lender, as such terms are defined in the Master Equipment Lease dated as of October 1, 1976 between the Lessor and the Master Lessee (the *Master Equipment Lease*), on the Date of Acceptance with respect to each Item of Equipment that:

(1) The representations and warranties of the Lessee set forth in Section 8 of the Master Equipment Lease and the applicable representations and warranties of the Master Lessee set forth in Section 9 of the Master Equipment Lease are true and correct in all material respects on and as of such date as though made on and as of such date;

(2) The Lessee and the Master Lessee have satisfied or complied with all requirements set forth in the Related Participation Agreement, as such term is defined in the Master Equipment Lease, and in the Lease to be satisfied or complied with on or prior to such date;

(3) No Event of Default under the Lease or event which, with the giving of notice or the lapse of time, or both, would become such an Event of Default has occurred and is continuing; and

(4) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to such Item of Equipment required to be obtained under the terms of the Lease.

\_\_\_\_\_  
as *Lessee*

By \_\_\_\_\_

**KANSAS CITY SOUTHERN INDUSTRIES, INC.,**  
as *Master Lessee*

By \_\_\_\_\_

Accepted on behalf of the Lessor:

**FIRST SECURITY BANK OF UTAH, N.A.**  
and **THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely as Owner  
Trustees under a Master Trust Agreement  
dated as of May 1, 1975 between the Owner  
Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976,  
as *Lessor*

By \_\_\_\_\_  
*Authorized Representative*

**Lessor:** First Security Bank of Utah, N.A.  
and Thomas C. Cuthbert, not in their  
individual capacities but solely as  
Owner Trustees

**Lessee:**

**Assignee:** United States Trust Company  
of New York, as Trustee

*First Termination Date* and *Lease Extension Periods*, if either or both of such terms shall be applicable to the Lease, shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 hereto.

*Casualty Value* and, if such term shall be applicable to the Lease, *Termination Value* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 3 hereto.

*Group of Equipment* and *Lessor's Cost* shall have the meanings set forth in the Certificate of Acceptance with respect to any Item or Items of Equipment.

Such terms as are defined in the Master Equipment Lease shall, when used in this Lease Supplement, have the same meanings as set forth in the Master Equipment Lease.

**SECTION 2.     *Agreement, Representations and Warranties of the Lessee and the Lessor***

The Lessee hereby agrees to become a party to, and the Lessee and the Lessor hereby agree to be bound by the terms and provisions of and hereby make the representations and warranties contained in, the Master Equipment Lease as it related to the Lease created hereby.

**SECTION 3.     *Agreement, Representations and Warranties of the Master Lessee***

The Master Lessee, by its execution and delivery of this Lease Supplement, specifically confirms its applicable representations, warranties and covenants contained in Section 9 of the Master Equipment Lease, including without limitation its agreement of guaranty contained in paragraph (b), clause (vi) thereof if the Master Lessee is not the Lessee under the Lease.

**SECTION 4.     *Special Terms***

Any special terms set forth in Exhibit 2 hereto shall be applicable to the Lease created by this Lease Supplement as though fully set forth therein.

IN WITNESS WHEREOF, the Lessor, the Lessee and the Master Lessee have caused this Lease Supplement to be duly executed by their respective officers thereunto duly authorized, on the date set forth in Exhibit 2 hereto.

**FIRST SECURITY BANK OF UTAH, N.A. and  
THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely  
as trustees under a Master Trust  
Agreement dated as of May 1, 1975  
between them and Itel Leasing  
Corporation and as amended as  
of October 1, 1976,  
as *Lessor*



**EXHIBIT B**  
**to Master Equipment Lease**

**LEASE SUPPLEMENT NO. \_\_\_\_**

**THIS LEASE SUPPLEMENT NO. \_\_\_\_** dated the date set forth in Exhibit 2 hereto among FIRST SECURITY BANK OF UTAH, N.A., a national banking association (the *Corporate Trustee*), and THOMAS C. CUTHBERT (the *Individual Trustee*), not in their individual capacities, but solely as trustees under a Master Trust Agreement dated as of May 1, 1975 between them and Itel Leasing Corporation (the *Owner Trustees* or the *Lessor*) and as amended as of October 1, 1976, the corporation named on the signature page hereof as "Lessee" (the *Lessee*) and KANSAS CITY SOUTHERN INDUSTRIES, INC. (the *Master Lessee*).

**W I T N E S S E T H :**

WHEREAS, the Master Lessee and the Lessor have executed and delivered a Master Equipment Lease dated as of October 1, 1976 (the *Master Equipment Lease*) for the purpose of creating an arrangement whereby separate leases may be created from time to time by either the Master Lessee or a subsidiary thereof for the purposes of leasing certain equipment in separate and distinct transactions; and

WHEREAS, in accordance with the Master Equipment Lease the Lessor, the Lessee and the Master Lessee are executing and delivering this Lease Supplement for the purpose of creating an agreement for lease of specific equipment described herein consisting of the Master Equipment Lease as it is supplemented or amended by this Lease Supplement (the *Lease*), which Lease shall be deemed dated the date of this Lease Supplement and shall be designated as *Kansas City Southern Industries, Inc. [Year of Creation of Lease] Equipment Lease No. \_\_\_\_*.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1.     *Definitions***

For the purposes of this Lease Supplement, and of the Master Equipment Lease insofar as it relates to the Lease created by this Lease Supplement, the following terms shall have the following meanings for all purposes of the Lease:

*Equipment*, and individually an *Item* or *Item of Equipment*, shall mean the items of equipment described in Exhibit 1 hereto.

*Final Delivery Date, Daily Lease Rate Factor, Rent Commencement Date, Interim Rent Date, Basic Lease Rate Factor, Basic Rent Dates, First Basic Rent Date, Last Basic Rent Date, Expiration Date, Depreciable Life, Investment Tax Credit, Depreciation Method, Overdue Rate, Return of Equipment and Marking of Equipment* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 hereto.

By **FIRST SECURITY BANK OF UTAH, N.A.,**  
not in its individual capacity, but  
solely as Corporate Trustee and on  
behalf of the Individual Trustee,  
as *Corporate Trustee*

By \_\_\_\_\_  
*Authorized Officer*

\_\_\_\_\_,  
as *Lessee*

By \_\_\_\_\_  
*Vice President*

**KANSAS CITY SOUTHERN INDUSTRIES, INC.,**  
as *Master Lessee*

By \_\_\_\_\_  
*Vice President*

EXHIBIT 1  
to Lease Supplement No. \_\_\_\_

DESCRIPTION OF EQUIPMENT

<u>Groups of Equipment</u>	<u>Quantity</u>	<u>Manufacturer /Seller</u>	<u>Description</u>	<u>Estimated Lessor's Cost</u>	
				<u>Item</u>	<u>Aggregate</u>

Total Estimated Lessor's Cost

\$ \_\_\_\_\_

EXHIBIT 2  
to Lease Supplement No. \_\_\_\_  
GROUPS OF EQUIPMENT  
\_\_\_\_\_

*Date of Lease and Lease Supplement:*

*Final Delivery Date:*

*Daily Lease Rate Factor:*

*Rent Commencement Date:*

*Interim Rent Date:*

*Basic Lease Rate Factor:*

*Basic Rent Dates:*

*First Basic Rent Date:*

*Last Basic Rent Date:*

*Expiration Date:*

*Depreciable Life:*

*Investment Tax Credit:*

*Depreciation Method:*

*Overdue Rate:*

*Return of Equipment:*

*Marking of Equipment:*

*First Termination Date:*

*Lease Extension Periods:*

*Description of Litigation, if any,  
Required by Section 8(d) of the  
Master Equipment Lease:*

*Description of Litigation, if any,  
Required by Section 9(b)(iv) of the  
Master Equipment Lease:*

*Special Terms Pursuant to Section 4  
of this Lease Supplement:*

**EXHIBIT 3**  
**to Lease Supplement No. \_\_\_\_**

**GROUPS OF EQUIPMENT**

---

The Casualty Value and Termination Value of each Item shall be the percentage of the Lessor's Cost of such Item set forth opposite the applicable Rent Payment with respect to the applicable Group of Equipment:

Interim Rent Date  
and Basic  
Rent Payment  
No. \_\_\_\_\_

Casualty Value (a)(b)

Termination Value (a)(b)

(a) Casualty Values and Termination Values are expressed as a percentage of Lessor's Cost. Such percentages have been computed without regard to recapture of Investment Tax Credit. Consequently, such percentages applicable on the Interim Rent Date or any Basic Rent Date where a Casualty Value or a Termination Value shall be payable with respect to an Event of Loss or termination occurring on or before the third, fifth and seventh anniversaries of the date of acceptance set forth in the Certificate of Acceptance for such Item shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of the Lease, Casualty Values and Termination Values payable on such dates shall be determined on the basis of the sum of such percentages.

<u>Anniversary of the Date of Acceptance</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
Third	%
Fifth	%
Seventh	%

(b) Any payment of Casualty Value on the Interim Rent Date or any Basic Rent Date and any payment of Termination Value on any Basic Rent Date shall in no event be less than an amount which, assuming the payment in full of all amounts of Basic Rent due and payable on such date, shall be equal to that portion of the principal of the Notes of such series, together with accrued interest thereon, due and payable in consequence of such Event of Loss or termination.

# COUNTERPART

---

## MASTER EQUIPMENT LEASE

Dated as of October 1, 1976

Between

**FIRST SECURITY BANK OF UTAH, N.A. and  
THOMAS C. CUTHBERT**, not in their individual  
capacities, but solely as Owner Trustees under a  
Master Trust Agreement dated as of May 1, 1975  
between the Owner Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976  
as *Lessor*

and

**KANSAS CITY SOUTHERN INDUSTRIES, INC.,**  
as *Master Lessee*

---



## MASTER EQUIPMENT LEASE

THIS MASTER EQUIPMENT LEASE dated as of October 1, 1976 between FIRST SECURITY BANK OF UTAH, N.A., a national banking association (the *Corporate Trustee*), and THOMAS C. CUTHBERT (the *Individual Trustee*), not in their individual capacities, but solely as trustees (the *Owner Trustees* or the *Lessor*), under a Master Trust Agreement dated as of May 1, 1975 between the Owner Trustees and IteL Leasing Corporation and as amended as of October 1, 1976, and KANSAS CITY SOUTHERN INDUSTRIES, INC., a Delaware corporation (the *Master Lessee*).

### W I T N E S S E T H :

WHEREAS, the Master Lessee desires to create pursuant hereto an arrangement whereby separate leases may be created from time to time by either the Master Lessee or a subsidiary thereof for the purposes of leasing certain equipment in separate and distinct transactions;

WHEREAS, each such separate lease is to be created pursuant to a separate Lease Supplement referred to below; and

WHEREAS, the Lessor is willing to lease equipment on the terms and conditions set forth herein and in any Lease Supplement.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. *Definitions; Construction of References*

In this Master Equipment Lease, unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Master Equipment Lease and, together with all other defined terms herein, shall include the plural as well as the singular:

(a) *Certificate of Acceptance* shall mean a certificate of acceptance substantially in the form of Exhibit A hereto.

(b) *Business Day* shall mean any day other than a Saturday, Sunday or other day on which banks in The City of New York, New York, are authorized to close.

(c) *Indenture* shall mean the Trust Indenture dated as of May 1, 1975 between United States Trust Company of New York, a New York corporation, as trustee thereunder (the *Trustee*), and the Corporate Trustee and the Individual Trustee.

(d) *Lease* shall mean an agreement for lease of specific equipment created pursuant to this Master Equipment Lease consisting of this Master Equipment Lease as it is supplemented or amended by a single Lease Supplement. References to a particular Lease shall mean the lease agreement created by a single Related Lease Supplement and shall not include any lease agreement created by any other Lease Supplement hereto, even if it bears the same designation, unless otherwise specifically provided in both such Related Lease Supplement and such other Lease Supplement.

(e) *Lease Supplement* shall mean a lease supplement substantially in the form of Exhibit B hereto.

(f) *Substantial Subsidiary* shall mean any subsidiary of the Master Lessee meeting any one of the following conditions:

- (i) The assets of such subsidiary, or the investment in or advances to such subsidiary by the Master Lessee and other subsidiaries of the Master Lessee, if any, exceed 5% of the assets of the Master Lessee and its subsidiaries on a consolidated basis;
- (ii) The sale and operating revenues of such subsidiary exceed 10% of the sales and operating revenues of the Master Lessee and the subsidiaries of the Master Lessee on a consolidated basis; or
- (iii) Such subsidiary is a parent of one or more subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a Substantial Subsidiary within the meaning of clauses (i) or (ii) above.

(g) With respect to a particular Lease

*Equipment*, and individually an *Item* or *Item of Equipment*, shall mean the items of equipment described in Exhibit 1 to the Related Lease Supplement.

*Final Delivery Date, Daily Lease Rate Factor, Rent Commencement Date, Interim Rent Date, Basic Lease Rate Factor, Basic Rent Dates, First Basic Rent Date, Last Basic Rent Date, Expiration Date, Depreciable Life, Investment Tax Credit, Depreciation Method, Overdue Rate, Return of Equipment* and *Marking of Equipment* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 to the Related Lease Supplement.

*First Termination Date* and *Lease Extension Periods*, if either or both of such terms shall be applicable to such Lease, shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 to the Related Lease Supplement.

*Casualty Value* and, if such term shall be applicable to such Lease, *Termination Value* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 3 to the Related Lease Supplement.

*Closing Dates* shall have the meaning set forth in the Related Participation Agreement.

*Group of Equipment* and *Lessor's Cost* shall have the meanings set forth in the Certificate of Acceptance with respect to any Item or Items of Equipment.

*Related Lease Supplement* shall mean the Lease Supplement creating such Lease.

*Related Lessee* shall mean the corporation named as "Lessee" in the Related Lease Supplement.

*Related Notes* shall mean those promissory notes defined as *Notes* in the Related Participation Agreement issued in connection with the purchase of the Leased Equipment.

*Related Participation Agreement* shall mean that portion of the agreement, dated the date of the Related Lease Supplement, as it relates to the Equipment, among the Lessor, the Master Lessee, the Related Lessee and the other corporations, if any, named as "Lessee" therein, the institution or institutions named as "Beneficiary" therein (the *Related Beneficiary*) and the other beneficiaries if any, named therein, the

proposed purchaser or purchasers of the Related Notes named therein (the *Related Lender*) and the proposed purchasers, if any, of the notes of the other series named therein, and the Trustee.

*Related Purchase Documents* shall mean those documents defined as *Purchase Documents* in the Related Participation Agreement which relate to the Equipment.

*Related Supplement* shall mean each indenture supplemental to the Indenture defined as *Supplement* in the Related Participation Agreement creating a series of Related Notes.

(h) The term *this Master Equipment Lease* means this instrument as originally executed, as it may from time to time be amended by one or more amendments hereto pursuant to the provisions hereof.

(i) All references in this instrument to designated Sections and other subdivisions are to designated Sections and other subdivisions of this instrument; and the words *herein*, *hereof* and *hereunder* and other words of similar import refer to this instrument as a whole and not to any particular Section or other subdivision.

(j) Except as otherwise indicated, all the agreements or instruments hereinafter defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

## SECTION 2. *Lease of Equipment*

In order to create a Lease, the Lessor, the Related Lessee and the Master Lessee shall execute and deliver a Related Lease Supplement, and the Lease created thereby shall be designated to differentiate such Lease from other Leases created pursuant to this Master Equipment Lease. Upon creation of a particular Lease and subject to the terms and conditions of such Lease, the Lessor agrees to lease to the Related Lessee, and the Related Lessee agrees to lease from the Lessor, such Items of Equipment as shall be described in one or more Certificates of Acceptance executed and delivered on behalf of the Lessor with respect thereto and as shall have been delivered and accepted by such Related Lessee and the Master Lessee under such Lease on or before the Final Delivery Date (*Leased Equipment*, and individually an *Item of Leased Equipment*). Upon delivery to the Lessor of each Item of Equipment specified in a particular Lease, the Related Lessee and the Master Lessee will cause an authorized representative of the Related Lessee to inspect the same and, if such Item of Equipment is found to be in good order and repair and in accordance with applicable specifications, to accept such Item of Equipment and to execute and deliver a Certificate of Acceptance with respect thereto, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Related Lessee and shall be subject to the terms and conditions of such Lease.

## SECTION 3. *Appointment of Authorized Representative*

For purposes of accepting delivery of each Item of Equipment with respect to a particular Lease, the Lessor by its execution and delivery of the Related Lease Supplement appoints one or more employees of the Related Lessee for such purposes only, who shall be so designated from time to time by the Related Lessee, as authorized representatives of the Lessor. Such authorized representatives shall thereby be authorized to take possession of such Equipment upon its delivery to the Related Lessee by the manufacturer or seller thereof, to accept on behalf of the Lessor all Related Purchase Documents, if any, delivered at such time with respect to such Equipment, to execute on behalf of the Lessor a Certificate of Acceptance with respect to such Equipment simultaneously with the execution thereof by the Related Lessee and the Master Lessee and to take such other action on behalf of the Lessor as shall be required to accept delivery of the Equipment set forth and described in such Certificate of Acceptance. The authority

granted to the Related Lessee pursuant to the provision of this Section 3 shall be subject to the provisions, if any, of the Related Participation Agreement relating to conditions to acceptance of Equipment.

#### SECTION 4. *Term and Rent*

(a) The term of a particular Lease as to each Item of Leased Equipment included in a Group of Equipment shall begin on the date of acceptance of such Items as set forth in the Certificate of Acceptance executed and delivered with respect thereto and shall end on the Expiration Date with respect to such Group of Equipment, unless such Lease shall have been terminated, or the term of such Lease with respect to such Group of Equipment shall have been extended, by the terms thereof.

(b) The Related Lessee shall pay to the Lessor as Basic Rent (herein referred to as *Basic Rent*) for each Item of Leased Equipment subject to a particular Lease, the following:

(1) on the Interim Rent Date, an amount equal to the Daily Lease Rate Factor, if any, multiplied by the Lessor's Cost of such Item, for each day elapsed from and including the Rent Commencement Date with respect to such Item to, but excluding, the Interim Rent Date;

(2) on the First Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item; and

(3) on each Basic Rent Date thereafter to and including the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item.

(c) The Related Lessee shall pay to the Lessor the following amounts (herein referred to as *Supplemental Rent* and, together with all Basic Rent, as *Rent*) with respect to a particular Lease:

(1) on demand, any amount payable thereunder (other than Basic Rent, Casualty Value and Termination Value, if any) which the Related Lessee assumes the obligation to pay, or agrees to pay, under such Lease to the Lessor or others;

(2) on the date provided therein, any amount payable thereunder as Casualty Value or Termination Value, if any; and

(3) to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Overdue Rate on any payment of Basic Rent, Casualty Value or Termination Value, if any, not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent (including, without limitation, interest payable under this clause (3), but excluding payments of Casualty Value or Termination Value, if any) not paid when demanded thereunder for the period from the date of such demand until the date on which the same shall be paid.

(d) Subject to paragraph (g) of Section 8 hereof, all payments of Rent under a particular Lease shall be made so that the Lessor shall have immediately available funds on the date payable thereunder, and shall be paid to the Lessor at its address set forth herein or at such other address as the Lessor may direct by notice in writing to the Related Lessee.

#### SECTION 5. *Net Lease*

Any Lease created pursuant to this Master Equipment Lease shall be a net lease and the Related Lessee acknowledges and agrees that the Related Lessee's obligation to pay all Rent under a particular Lease to which it is a party, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional

and shall not be affected by any circumstance including any abatement, reduction, set-off, deduction, suspension, deferment, diminution or other right, defense, counterclaim or recoupment (*Abatements*) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Related Lessee or the Master Lessee against the Lessor under such Lease or otherwise, or against the manufacturer or seller of any Item of Leased Equipment, any defect in title, condition, design, operation or fitness for use or existence of any liens, encumbrances or rights of others whatsoever against the Leased Equipment or against any Rents whether or not resulting from actions of the Related Lessee, insolvency, bankruptcy, reorganization or similar proceedings against the Master Lessee or Related Lessee, any failure by the Lessor, the Trustee or any Related Lender to comply with the Lease or any other agreement or business dealing with Master Lessee or Related Lessee, or acquisition by the Master Lessee or Related Lessee of ownership of all or part of the Lessor's interest in the Leased Equipment otherwise than as provided in such Lease. Except as otherwise expressly provided therein, a particular Lease shall not terminate, nor shall the respective obligations of the Lessor or the Related Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Leased Equipment or any Item thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of such Lease or lack of right, power or authority of the Lessor to enter into such Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding. It is the express intention of the Lessor and the Related Lessee that all Rent payable by the Related Lessee under a particular Lease shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of such Lease.

#### **SECTION 6.     *Return of Equipment***

Upon the termination of a particular Lease or the expiration of the term of such Lease as to a Group of Equipment, the Related Lessee, at its own expense, will return the Leased Equipment with respect to such Lease or with respect to such Group of Equipment, as the case may be, to the Lessor pursuant to the Lessor's instructions set forth under the heading *Return of Equipment* in Exhibit 2 to the Related Lease Supplement and in the condition in which the Leased Equipment is required to be maintained pursuant to Section 12 hereof. The Leased Equipment, upon being returned pursuant to a particular Lease, shall be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims (*Liens*), other than Liens which result from claims against the Lessor which do not result or arise from the failure of the Related Lessee to perform any of its obligations under such Lease (*Lessor's Liens*).

#### **SECTION 7.     *Representations and Warranties of the Lessor***

(a) With respect to a particular Lease, the Lessor represents and warrants to the Related Lessee and to the Master Lessee if the Master Lessee is not the Related Lessee that (1) on the date of acceptance of each Item of Equipment as set forth in the Certificate of Acceptance executed and delivered with respect thereto, it shall have received whatever title was conveyed to it by the manufacturer or seller of such Item of Leased Equipment referred to therein and that such Leased Equipment shall be free of Liens which may result from claims against the Lessor not related to the ownership of such Leased Equipment, and (2) during the term of such Lease, if no Event of Default has occurred, the Related Lessee's use of such Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied, to a Related Lessee and the Master Lessee with respect to a particular Lease or the Leased Equipment; and the Lessor shall not be deemed to have made, and the LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OR OPERATION OF THE LEASED EQUIP-

MENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LEASED EQUIPMENT OR CONFORMITY OF THE LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), but the Lessor authorizes the Related Lessee, at the Related Lessee's expense, to assert for the Lessor's account, during the term of such Lease, so long as no Event of Default shall have occurred thereunder and be continuing, all of the Lessor's rights under the manufacturer's or seller's warranty and the Lessor agrees to cooperate with the Related Lessee in asserting such rights; *provided, however,* that the Related Lessee shall indemnify and shall hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection therewith, as a result of, or incidental to, any action by the Related Lessee pursuant to the above authorization. Any amount received by the Lessor as payment under any such warranty shall be applied to restore the Leased Equipment to the condition required by Section 12 hereof, with the balance of such amount, if any, to be paid over to the Related Lessee.

#### **SECTION 8.     *Representations, Warranties and Covenants of the Related Lessee***

With respect to a particular Lease, the execution and delivery of the Related Lease Supplement by the Related Lessee will constitute the representation, warranty and covenant by it to the Lessor that:

(a) *Corporate Organization and Power.* Such Related Lessee is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, is duly qualified to do business in each jurisdiction, including each jurisdiction where any Item of Leased Equipment is, or is to be, located, where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under such Lease, the Related Participation Agreement and any other instrument contemplated hereby or thereby to which it is a party.

(b) *Execution and Delivery of Documents.* The execution, delivery and performance by such Related Lessee of such Lease, the Related Participation Agreement and any Related Purchase Documents and any other instrument contemplated hereby or thereby to which such Related Lessee is a party have been duly authorized by all necessary corporate action on the part of such Related Lessee, are not inconsistent with such Related Lessee's Certificate of Incorporation or By-Laws, do not contravene any law or governmental rule, regulation or order applicable to it, and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which such Related Lessee is a party or by which it or any of its properties is bound; such Lease, the Related Participation Agreement and such Related Purchase Documents and any other instrument contemplated hereby or thereby to which it is a party constitute legal, valid and binding agreements of such Related Lessee, enforceable in accordance with their respective terms. The Related Purchase Documents will be valid and effective to transfer, and will transfer, good title to the Equipment to the Lessor free and clear of all Liens except those permitted under such Lease.

(c) *Governmental Approvals.* No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery or performance by such Related Lessee of such Lease, the Related Participation Agreement or any Related Purchase Documents or the transactions contemplated thereby or, if any such approval, notice, registration or action is required, it has been obtained.

(d) *Litigation.* Except as set forth in Exhibit 2 to the Related Lease Supplement, there are no actions, suits or proceedings pending or, to the knowledge of such Related Lessee, threatened against or affecting such Related Lessee in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of such Related Lessee to perform its obligations under such Lease, the Related Participation Agreement or any Related Purchase Documents.

(e) *Condition of the Equipment, etc.* The Equipment is personal property and the Leased Equipment, when subjected to use by such Related Lessee under such Lease, will not be or become fixtures under applicable law. If and to the extent that the Leased Equipment, or any portion thereof, is identified in a Certificate of Acceptance executed and delivered under such Lease as new, such Leased Equipment will be new and unused on the date and at the time title thereto is to be acquired by the Lessor and will not have been put into use or operation by such Related Lessee prior to the date of acceptance set forth in such Certificate of Acceptance. The term of such Lease with respect to Items of Leased Equipment is not more than 80% of the useful life of such Items of Leased Equipment and all such Items of Leased Equipment will have a residual value of at least 20% of the Lessor's Cost at the end of such term.

(f) *Merger, Sale, etc.* Upon any consolidation or merger of such Related Lessee with or into any other corporation or corporations (whether or not affiliated with such Related Lessee or the Master Lessee), or successive consolidations or mergers in which such Related Lessee or its successor or successors shall be a party or parties, or upon any sale or conveyance of all or substantially all of the property of such Related Lessee to any other person, such Related Lessee will cause the due and punctual payment of all Rent and the due and punctual performance and observance of all covenants and obligations of such Related Lessee under such Lease and the Related Participation Agreement to be assumed by the corporation (if other than such Related Lessee) formed by such consolidation, or the corporation into which such Related Lessee shall have been merged or by the person which shall have acquired such property; provided that notwithstanding anything herein to the contrary if the Related Lessee is the Master Lessee paragraph (b)(v) of Section 9 hereof shall apply.

(g) *Consent to Assignment of the Lease.* Such Related Lessee acknowledges and consents to the assignment of such Lease by the Lessor to the Trustee under and pursuant to the Indenture and the Related Supplement and agrees

(i) to make all payments of Rent assigned thereby directly to the Trustee, and in such fashion so that the Trustee shall have immediately available funds on the date payable thereunder, so long as the Related Notes shall be outstanding and unpaid;

(ii) not to seek to recover any payment made to the Trustee pursuant to the Indenture and the Related Supplement once such payment is made;

(iii) that, so long as the Related Notes shall be outstanding and unpaid and no event which, after the giving of notice or lapse of time, or both, would mature into either an Event of Default or Related Event of Default (as defined in the Indenture) shall have occurred and be continuing, all rights of the Lessor shall be exercisable by the Trustee, as assignee and secured party, and the Lessor, jointly; otherwise, so long as the Related Notes shall be outstanding and unpaid, such rights shall be exercisable exclusively by the Trustee, as assignee and secured party; and

(iv) except as set forth in the Related Supplement, to execute and file, or to cause others within its control to execute and file, any financing statements, continuation statements or other documents necessary to create, perfect, protect and preserve the prior security interests to be acquired by the Trustee under the Indenture (including the Related Supplement) until all obligations with respect to all

Related Notes issued in connection with the transactions contemplated thereby shall have been fulfilled (it being understood no such recording or filing shall constitute an acknowledgment, or imply, that such Lease constitutes or creates a "security interest" within the meaning of any applicable Uniform Commercial Code).

**SECTION 9. *Representations, Warranties and Covenants of the Master Lessee***

(a) With respect to a particular Lease, the execution and delivery of the Related Lease Supplement by the Master Lessee in its capacity as either the Related Lessee or the Master Lessee will constitute the representation, warranty and covenant by it to the Lessor that:

(i) *Financial Statements.* The consolidated balance sheet and statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) theretofore delivered to the Related Beneficiary and the Related Lender have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) on and as of the date thereof and the results of their operations for the period or periods covered thereby. Since the date of such consolidated balance sheet there has been no material adverse change in the financial condition of the Master Lessee or its consolidated subsidiaries (including each Related Lessee).

(ii) *Access to or Furnishing of Information.* If either the Related Beneficiary or the Related Lender shall so request, the Master Lessee agrees that, on or before the first Closing Date, each such party shall have access to, or the Master Lessee shall furnish to each such party, the same kind of information (including specifically information with respect to the Equipment) which an issuer of securities would be required to furnish to an offeree of such securities under paragraph (e) of Rule 146 adopted by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended. The Master Lessee also agrees to furnish to such parties and to the holder of any Related Note:

(1) within 120 days after the close of each fiscal year of the Master Lessee occurring after the date of such Lease, an audited consolidated balance sheet of the Master Lessee and its consolidated subsidiaries (including each Related Lessee), at and as of the end of such fiscal year, together with an audited consolidated statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) for such fiscal year;

(2) within 45 days after the close of each of the first three quarters of each fiscal year of the Master Lessee occurring after the date of such Lease, an unaudited balance sheet of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) at and as of the end of such quarter, together with an unaudited statement of income of the Master Lessee and its consolidated subsidiaries (including each Related Lessee) for such quarter;

(3) within the period set forth in (1) above, a certificate of the chief financial officer of the Master Lessee and the Related Lessee stating that they have reviewed the activities of the Related Lessee and that, to the best of their knowledge, there exists no Event of Default, as such term is defined in such Lease, and no event which with the giving of notice or the lapse of time, or both, would become such an Event of Default;

(4) simultaneously with the distribution or mailing thereof, copies of all such financial statements or reports as the Master Lessee, or any of the consolidated subsidiaries (including each Related Lessee) of the Master Lessee, shall distribute or mail to its shareholders after the date of such Lease; and



(5) from time to time, such other information as any such party may reasonably request.

(iii) *Payment of Taxes.* The Master Lessee will pay and discharge, and cause the Related Lessee and each Substantial Subsidiary to pay and discharge, all taxes, assessments and governmental ~~charges~~ <sup>properties</sup> or levies imposed upon it or its income or profits or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any properties of Master Lessee, the Related Lessee or any Substantial Subsidiary, provided that neither the Master Lessee nor the Related Lessee nor any Substantial Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings.

(iv) *Compliance with Laws.* The Master Lessee will comply, and cause the Related Lessee and each Substantial Subsidiary to comply, with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, non-compliance with which would materially adversely affect its business or credit, except that the Master Lessee or the Related Lessee or any Substantial Subsidiary may in good faith and by proper proceedings contest any such law, rule, regulation or order so long as the business or credit of the Master Lessee, the Related Lessee or the Substantial Subsidiary, as the case may be, would not be materially adversely affected thereby.

(b) If the Master Lessee is not the Related Lessee with respect to a particular Lease, then upon the execution and delivery of the Related Lease Supplement by the Related Lessee the Master Lessee will co-execute the Related Lease Supplement and such co-execution will constitute the representation, warranty and covenant by the Master Lessee to the Lessor that:

(i) *Corporate Organization and Power; Ownership of Stock of Related Lessee.* The Master Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under such Lease and the Related Participation Agreement. The Master Lessee is the beneficial and record owner of at least 80% of the outstanding shares of capital stock having the power to elect a majority of the board of directors of the Related Lessee.

(ii) *Execution and Delivery of Documents.* The execution, delivery and performance by the Master Lessee of such Lease and the Related Participation Agreement and any other instrument contemplated hereby or thereby to which the Master Lessee is a party have been duly authorized by all necessary corporate action on the part of the Master Lessee, are not inconsistent with the Master Lessee's Certificate of Incorporation or By-Laws, do not contravene any law or governmental rule, regulation or order applicable to it, and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Master Lessee is a party or by which it or any of its properties is bound; such Lease and the Related Participation Agreement and any other instrument contemplated hereby or thereby to which it is a party constitute legal, valid and binding agreements of the Master Lessee, enforceable in accordance with their respective terms.

(iii) *Governmental Approvals.* No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery or performance by the Master Lessee of such Lease or the Related Participation Agreement or, if any such approval, notice, registration or action is required, it has been obtained.

(iv) *Litigation.* Except as set forth in Exhibit 2 to the Related Lease Supplement, there are no actions, suits or proceedings pending or, to the knowledge of the Master Lessee, threatened against or affecting the Master Lessee in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Master Lessee to perform its obligations under such Lease or the Related Participation Agreement.

(v) *Merger, Sale, etc.* The Master Lessee will not merge or consolidate with or into any other corporation or corporations (other than with or into a majority owned subsidiary of the Master Lessee) or sell or convey all or substantially all of the property of the Master Lessee to any other person (other than to a majority owned subsidiary of the Master Lessee) without the prior written consent of the Lessor; and notwithstanding anything herein to the contrary (including the assignment of such Lease by the Lessor to the Trustee) such consent shall be exercisable only by the Lessor. If there is such merger or consolidation with or into, or sale to, a majority owned subsidiary of the Master Lessee, the Master Lessee will cause the due and punctual performance and observance of all covenants and obligations of the Master Lessee under such Lease and the Related Participation Agreement to be assumed by such majority owned subsidiary (if other than the Master Lessee). The Master Lessee will not permit any individual, corporation, partnership, trustee or unincorporated organization (other than a subsidiary of the Master Lessee) to acquire beneficial interest in more than 40% of the outstanding voting securities of the Master Lessee.

(vi) *Guaranty.* The Master Lessee unconditionally guarantees the due and punctual payment by the Related Lessee, in accordance with the terms and provisions of such Lease, of any and all sums (including, but not limited to, all Rent, indemnities and interest) which are payable by the Related Lessee under such Lease, and in the event the Related Lessee shall fail to pay any such amounts, the Master Lessee will pay the same in accordance with such Lease. The agreement of guaranty contained in this clause (vi) is a continuing guarantee and shall remain in full force and effect until payment in full of all sums payable by the Related Lessee under such Lease and by the Master Lessee hereunder. The Master Lessee agrees that such agreement of guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of any sum hereby guaranteed is rescinded or must be otherwise restored or returned by the Lessor upon the insolvency, bankruptcy or reorganization of the Related Lessee, or otherwise, all as though such payment had not been made.

(vii) *Master Lessee's Obligations Not Affected.* The obligations of the Master Lessee under clause (vi) hereof shall remain in full force and effect without regard to, and shall not be impaired or affected by, any act or omission to act of any kind by the Lessor or any other person, or any other circumstances whatsoever which might constitute a legal or equitable discharge of a guarantor, including, but not limited to: (a) any waiver, consent, extension, indulgence, release, discharge, surrender, amendment, modification or assignment or other like action in respect of such Lease or any agreement relating thereto, (b) any exercise or nonexercise by the Lessor, the Trustee, the Related Lender, or Related Beneficiary or any assignee of any of them of any right, remedy, power or privilege under or in respect of the agreement of guaranty contained in clause (vi) hereof, such Lease or any agreement relating thereto, or any waiver of any such right, remedy, power or privilege, (c) any sale, transfer or other disposition by the Master Lessee of any shares of capital stock of the Related Lessee, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, or the like, of the Related Lessee, or (e) the invalidity, illegality or unenforceability of such Lease for any reason; it being the intention of the Master Lessee that the agreement of guaranty contained in clause (vi) hereof be absolute and unconditional in any and all circumstances and that such agreement of guaranty shall only be discharged by the irrevocable payment in full of all sums so guaranteed.

(viii) *Recovery against the Master Lessee; Waiver.* In the event of default by the Master Lessee under its agreement of guaranty contained in clause (vi) hereof, recovery may be had against the Master Lessee in any action, suit or proceeding without any requirement that the Lessor or any assignee of the Lessor first assert, prosecute or exhaust any right, power or remedy against the Related Lessee, its successors or assigns. The Master Lessee unconditionally waives acceptance of the agreement of guaranty contained in clause (vi) hereof and notice of any of the matters referred to in clause (vii) hereof, all other notices, demands and protests that may be required by statute, rule of law or otherwise to preserve the rights of the Lessor hereunder, and any requirement of diligence on the part of the Lessor.

#### **SECTION 10.           *Liens***

With respect to a particular Lease, the Related Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Leased Equipment, the Lessor's title thereto or any interest therein (and the Related Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (1) the respective rights of the Lessor and the Related Lessee as provided in such Lease, (2) Lessor's Liens, (3) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings do not, in the opinion of such counsel, adversely affect the title, property, or rights of the Lessor, (4) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Related Lessee and not delinquent, and (5) Liens granted by the Lessor to any assignee or security assignee of the Lessor. The Related Lessee will notify promptly the Lessor in writing of any such lien.

#### **SECTION 11.           *Taxes***

With respect to a particular Lease, the Related Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (*Impositions*), arising out of the transactions contemplated by such Lease and imposed against the Lessor, the Master Lessee, the Related Lessee or the Leased Equipment by any federal, state, local or foreign government or taxing authority upon or with respect to the Leased Equipment or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to such Lease (excluding, however, taxes on, or measured solely by, the net income of the Lessor) unless, and only to the extent that, the Related Lessee shall have given to the Lessor written notice of any such Imposition, which notice shall state that such Imposition is being contested by the Related Lessee in good faith and by appropriate proceedings and counsel for the Lessor shall have determined that the nonpayment thereof or the contest thereof in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor. Upon termination of such proceedings prior to a determination therein or upon a determination therein adverse to the Lessor or upon the happening of any event whereby the Lessor is required to pay such Imposition, the Related Lessee agrees to pay and to indemnify the Lessor for such Imposition. In case any report or return is required to be made with respect to any obligation of the Related Lessee under this Section or arising out of this Section, the Related Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Leased Equipment in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Related Lessee in the preparation of any such report or return. All amounts payable to the Lessor under this Section shall be computed on an "after-tax" basis so that such payments shall be in an amount which, when reduced by the

income tax liability or liabilities of the recipient or any other party as a result of such payment by the Related Lessee, shall equal the after-tax cost of the Imposition.

**SECTION 12.                      *Use, Maintenance and Operation, Identifying Marks***

(a) With respect to a particular Lease, the Related Lessee agrees that the Leased Equipment will be used in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency and any insurance policies applicable to the use of the Leased Equipment, and, subject to the provisions of Section 17 hereof, will at all times be used solely in the conduct of its business and be and remain in the possession and control of the Related Lessee or any 80% owned subsidiary of the Master Lessee at the location designated in the Related Lease Supplement, or if not so designated, at the location of its acceptance set forth in the Certificate of Acceptance with respect to each Item of Equipment or at such other location to which the Lessor shall give prior written consent, which consent shall not be unreasonably withheld. Throughout the term of such Lease, the possession, use and maintenance of the Leased Equipment shall be at the sole risk and expense of the Related Lessee. Throughout the term of such Lease the Related Lessee will obtain and keep in effect all licenses and permits required to be obtained with respect to the Leased Equipment.

(b) With respect to a particular Lease, the Related Lessee, at its own cost and expense, will repair and maintain the Leased Equipment so as to keep it in as good condition as warranted by the manufacturer or seller and as required by the Related Lessee's specifications as when accepted by the Related Lessee under such Lease, ordinary wear and tear excepted. Any replacement made by the Related Lessee upon an Item of Lease Equipment in connection with repairing such Item shall have a value and utility at least equal to the value of such part being replaced, assuming such replaced part to be in good operating order and shall be considered an accession to such Item, and title to such replacement part shall vest in the Lessor. Title of the original part so replaced in connection with said repairing of such Item shall thereupon vest in the Related Lessee.

(c) With respect to a particular Lease, the Related Lessee will not, without the prior written consent of the Lessor, affix or install any accessory, equipment, or device on any Item of Leased Equipment leased thereunder which will impair the originally intended function or use of any such Item. Any accessory, equipment, or device so installed shall, without necessity of further act, become part of the Leased Equipment and the property of the Lessor; *provided, however*, that so long as no Event of Default under such Lease shall have occurred and be continuing, any such accessory, equipment, or device not installed as a replacement on any Item of Leased Equipment may be removed (so long as such removal can be accomplished without damage to any Item of Leased Equipment) by the Related Lessee, at its own expense and risk, at any time during, or at the expiration of, such Lease, whereupon such accessory, equipment, or device shall, without necessity of further act, become the property of the Related Lessee. Notwithstanding the foregoing, the Related Lessee shall not, without the prior written consent of the Lessor make any changes to, or otherwise alter or improve, any Item of Leased Equipment in a manner which would constitute an improvement or addition to such Item of Leased Equipment which is not readily removable without causing material damage to such Item of Leased Equipment within the meaning of Rev. Proc. 75-21 promulgated by the Internal Revenue Service or other similar procedure then in effect. The Related Lessee will not, without the prior written consent of the Lessor and subject to such conditions as the Lessor may impose for its protection, affix any Item of Leased Equipment to any real property if, as a result thereof, any such Item will become a fixture under applicable law.

(d) With respect to a particular Lease, the Related Lessee agrees, at its own cost and expense, to (1) cause each Item of Leased Equipment to be kept numbered with the identification or serial number therefor as specified in the Certificate of Acceptance therefor and (2) maintain the marking on each Item of

Leased Equipment as shall be set forth under the heading *Marking of Equipment* in Exhibit 2 to the Related Lease Supplement and as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Item of Leased Equipment, the rights of the Lessor under such Lease and the Lien granted by the Lessor in financing the Lessor's Cost of the Leased Equipment. The Related Lessee will not place any Item of Leased Equipment in operation or exercise any control or dominion over the same until such marking has been placed thereon. The Related Lessee will replace promptly any such marking which may be removed, defaced or destroyed. The Related Lessee may cause the Leased Equipment to be lettered with the names, initials or other insignia customarily used by the Related Lessee on equipment used by it of the same or similar type for convenience of identification.

### **SECTION 13.    *Inspection***

The Lessor shall have the right, but not the duty, to inspect the Leased Equipment with respect to a particular Lease. Upon the request of the Lessor, the Related Lessee shall confirm to the Lessor the location of each Item of Leased Equipment and shall, at any reasonable time, make the Leased Equipment, and the Related Lessee's records pertaining to the Leased Equipment, available to the Lessor for inspection.

### **SECTION 14.    *Loss or Destruction; Requisition***

(a) In the event any Item of Leased Equipment is physically damaged to a material extent by any occurrence whatsoever, the Related Lessee shall promptly notify the Lessor and shall determine within 15 days of the date of such notice whether such Item of Leased Equipment can be repaired.

(b) In the event any Item of Leased Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (*Requisition of Use*) for a stated period which exceeds the term of a particular Lease (any such occurrence being referred to as an *Event of Loss*), the Related Lessee shall promptly notify the Lessor and pay to the Lessor, on the next rent payment date for such Item following such Event of Loss, an amount equal to the Casualty Value of such Item on such rent payment date. Any installment of Basic Rent with respect to such Item due on such rent payment date shall remain due and payable. After the payment of such Casualty Value and all Rent due and owing with respect to such Item as of such payment date, the Related Lessee's obligation to pay further Basic Rent for such Item shall cease, but the Related Lessee's obligation to pay Supplemental Rent, if any, for such Item of Leased Equipment, and to pay Rent for all other Items of Leased Equipment shall remain unchanged. Except in the case of loss, theft, destruction or a Requisition of Use, after the payment of such Casualty Value the Lessor will be entitled to recover possession of each Item of Leased Equipment suffering an Event of Loss.

(c) Following payment of the Casualty Value of an Item of Leased Equipment in accordance with the provisions of paragraph (b) of this Section, the Related Lessee shall either purchase such Item for an amount equal to the Fair Market Value thereof (as such term is hereinafter defined) or, as agent for the Lessor, dispose of such Item as soon as it is able to do so for the best price obtainable. Any such purchase or disposition shall be on an *as is, where is* basis without representation or warranty, express or implied. As to each separate Item so purchased or disposed of, the Related Lessee may, after paying the Lessor the amounts specified in such paragraph (b), retain all amounts of such price up to the Casualty Value and the Related Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor.

(d) In the case of a Requisition of Use for an indefinite period or for a stated period which does not exceed the term of a particular Lease, such Requisition of Use shall not terminate such Lease and each and every obligation of the Related Lessee with respect thereto shall remain in full force and effect. So long

as no Event of Default shall have occurred and be continuing under such Lease, the Lessor shall pay the Related Lessee all sums received by the Lessor by reason of any such Requisition of Use, up to the amount of the Basic Rent paid by the Related Lessee during the period of such Requisition of Use.

(e) *Fair Market Value* shall be determined on the basis of, and shall mean the aggregate amount which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (1) a lessee currently in possession, or (2) a used equipment dealer) and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Items, shall be taken into account in making such determination. If the Lessor and the Related Lessee are unable to agree upon a determination of Fair Market Value with respect to a particular Item of Leased Equipment, such Fair Market Value shall be determined in accordance with the procedure for Appraisal as described in paragraph (f) of this Section.

(f) *Appraisal* shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of such Items, one chosen by the Related Lessee and one by the Lessor, shall mutually agree upon the amount in question. The Lessor or the Related Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 Business Days after receipt from the other party of a written notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be a manufacturer of such Items, shall be chosen within five Business Days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 10 Business Days after the selection of such third appraiser and such decision shall be binding and conclusive on the Lessor and the Related Lessee. The Lessor and the Related Lessee shall pay the fees and expenses of the respective appraisers appointed by them and shall share equally the fees and expenses of the third appraiser, if any.

#### **SECTION 15. Insurance**

At its own expense, the Related Lessee of a particular Lease will cause to be carried and maintained casualty insurance with respect to each Item of Leased Equipment and public liability insurance, in each case in amounts and against risks customarily insured against by the Related Lessee on similar equipment and, in any event, in amounts and against risks comparable to those insured against by the Related Lessee on equipment owned by it. If requested by the Lessor, all policies with respect to such insurance shall name the Lessor, the Trustee (as assignee and secured party) and the Related Lessee as assureds and loss payees, as their interests may appear, and shall provide for at least 10 days' prior written notice by the underwriter or insurance company to the Lessor in the event of cancellation or expiration. The Related Lessee shall, upon request of the Lessor, furnish appropriate evidence of such insurance.

#### **SECTION 16. Indemnification**

With respect to a particular Lease, the Related Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against, any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (*Claims*) which may be imposed on, incurred or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of such Lease, the Related Purchase Documents, the Related Participation Agreement, the Indenture or any other document contemplated hereby or thereby, or

the performance or enforcement of any of the terms hereof and thereof, or the Related Trust Estate (as defined in the Master Trust Agreement) or the failure of the Indenture to create a valid first lien and security interest on and in the Related Estate (as defined in the Indenture), or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, repair, sale, return, storage or disposition of or defect in or failure of title to any Item of Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); *provided, however*, that the Related Lessee shall not be required to indemnify the Lessor for (1) any Claim in respect of any Item of Leased Equipment arising from acts or events which occur after full and final compliance by the Related Lessee with all the terms of such Lease with respect to such Item, or (2) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. The Related Lessee agrees that the Lessor shall be not liable to the Related Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of the Related Lessee. The rights and indemnities of the Lessor under such Lease are expressly made for the benefit of, and shall be enforceable by, the Lessor notwithstanding the fact that the Lessor is either no longer a party to such Lease, or was not a party to such Lease at its outset.

#### **SECTION 17.   *Sublease***

With respect to a particular Lease, the Related Lessee will not, without the prior written consent of the Lessor, which consent will not be unreasonably withheld, sublet or otherwise relinquish possession of the Leased Equipment or assign any of its rights thereunder, except that such Lease may be assigned, without the written consent of the Lessor, to the Master Lessee or to any subsidiary of the Master Lessee if at the time of such assignment the Master Lessee is the beneficial owner of 80% or more of the outstanding shares of capital stock of such subsidiary. No sublease, other relinquishment of the possession of the Leased Equipment or assignment by the Related Lessee of any of its rights thereunder shall in any way discharge or diminish any of the Master Lessee's or the Related Lessee's obligations to the Lessor thereunder. Any such assignee shall expressly agree to be bound by the terms of such Lease.

#### **SECTION 18.   *Events of Default***

The term *Event of Default*, wherever used herein, shall mean any of the following events under a particular Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Related Lessee shall fail to make any payment of Rent when due and such failure shall continue for 2 days after written or electronic notice thereof from the Lessor to the Related Lessee; or

(b) The Related Lessee or the Master Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under such Lease or any document or certificate delivered by either the Related Lessee or the Master Lessee in connection therewith, and such failure shall continue for 20 days after written notice thereof from the Lessor to the Related Lessee or to the Master Lessee, as the case may be; or

(c) Any representation or warranty made by either the Related Lessee or the Master Lessee in such Lease or in any document or certificate furnished in connection therewith or pursuant thereto shall prove to have been incorrect in any material respect when any such representation or warranty was made or given or any opinion of counsel furnished by counsel to the Related Lessee or the Master Lessee in connection therewith or pursuant thereto shall prove to be incorrect in any material respect as of the date thereof; or

(d) A petition in bankruptcy shall be filed by either the Master Lessee or the Related Lessee or a Substantial Subsidiary, or the Master Lessee or the Related Lessee or a Substantial Subsidiary shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for the Master Lessee or the Related Lessee or a Substantial Subsidiary, for any part of the Leased Equipment or for a substantial part of the property of either the Master Lessee or the Related Lessee or a Substantial Subsidiary without its consent and shall not be dismissed within a period of 60 days; by order or decree of a court of competent jurisdiction the Master Lessee or the Related Lessee or a Substantial Subsidiary shall be adjudicated insolvent or bankrupt; or bankruptcy, reorganization or insolvency proceedings shall be instituted against the Master Lessee or the Related Lessee or a Substantial Subsidiary and shall not be dismissed for a period of 60 days; or

(e) The Master Lessee or the Related Lessee or a Substantial Subsidiary shall be in default under any obligation (other than any obligation in an aggregate principal amount of less than \$100,000) for the payment of borrowed money or for the deferred purchase price of, or for the payment of any rent under any lease agreement covering, material real or personal property, and the applicable grace period with respect thereto shall have expired and the obligations shall not be contested in good faith (for the purposes of this Master Equipment Lease, any Lease created hereunder shall be deemed a lease covering material personal property); or

(f) The Related Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet (except as expressly permitted by the provisions of such Lease) the Leased Equipment or any Item of Leased Equipment.

#### **SECTION 19. Remedies**

(a) Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare the particular Lease to be in default by written notice to such effect given to the Related Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(1) Proceed by appropriate court action, either at law or in equity, to enforce performance by the Master Lessee or the Related Lessee of the applicable covenants of such Lease or to recover damages for the breach thereof;

(2) By notice in writing terminate such Lease, whereupon all rights of the Related Lessee to the use of the Leased Equipment shall absolutely cease and terminate but the Related Lessee shall remain liable as hereinafter provided; and thereupon the Related Lessee, if so requested by the Lessor, shall at its expense promptly return the Leased Equipment to the possession of the Lessor at the location where the Leased Equipment is in last use and in the condition required upon the return thereof pursuant to and in accordance with the terms of such Lease, or the Lessor, at its option, may enter upon the premises where the Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. Any such entry shall be without liability to the Related Lessee, the Master Lessee or any user of the Leased Equipment for or by reason of such entry or taking of possession, whether for restoration of damages to property damaged by such taking or otherwise.



The Related Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared such Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Leased Equipment, computed as of the Basic Rent Date following the date on which the Lessor has declared such Lease to be in default. Following the return of the Leased Equipment to the Lessor pursuant to this paragraph (2), the Lessor shall sell the Leased Equipment in such manner as it shall deem appropriate. The Related Lessee hereby waives, to the extent permitted by law, any right requiring sale or marshalling of assets. The proceeds of such sale shall be applied by the Lessor (A) *first*, to all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, and (B) *second*, to reimburse the Related Lessee for the Casualty Value to the extent previously paid by the Related Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that the Casualty Value has not been previously paid, the Related Lessee shall forthwith pay to the Lessor the sum of (i) the amount by which (X) the sum of (a) the Casualty Value thereof, and (b) the amount payable under clause (A) of the preceding sentence to the extent not previously paid, exceeds (Y) the sale price of the Leased Equipment, and (ii) interest at the Overdue Rate on the full amount of the Casualty Value, computed from the date the Casualty Value is payable hereunder until such Casualty Value is paid by the Related Lessee.

(b) The Related Lessee of a particular Lease shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor or the Related Beneficiary by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default under a particular Lease shall in any way be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

## **SECTION 20.   *Lease Extension***

(a) Provided that a particular Lease has not been terminated and provided that no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing thereunder, the Related Lessee shall have the option to extend the term of such Lease with respect to all, but not less than all, Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group for one or more consecutive Lease Extension Periods for a rental equal to the Fair Market Rental Value thereof, determined as of the end of such term.

(b) Not less than 180 days prior to the end of the term of a particular Lease with respect to such Group, the Related Lessee may indicate, by written notice to the Lessor, the Related Lessee's interest in exercising the Related Lessee's lease extension option described above, which notice shall set forth the Related Lessee's estimate of the Fair Market Rental Value of the Items of Leased Equipment included in such Group as of the end of such term. If, on or before a date 135 days prior to the expiration of the term thereof, the Lessor and the Related Lessee are unable to agree upon a determination of the the Fair Market

Rental Value of such Group, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal as described in paragraph (f) of Section 14 hereto. After a determination of the Fair Market Rental Value of such Group has been made in accordance with the procedure described above, the Related Lessee may exercise its option to extend the term of such Lease with respect to such Group for the Fair Market Rental Value thereof by delivering written notice of such exercise to the Lessor not less than 75 days prior to the expiration of the term of such Lease.

(c) *Fair Market Rental Value* shall be determined on the basis of, and shall mean the aggregate amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease.

#### **SECTION 21. *Purchase Option***

(a) Provided that a particular Lease has not been terminated and provided that no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing thereunder, the Related Lessee shall have the option to purchase all, but not less than all, Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group for a purchase price equal to the Fair Market Value thereof, as defined in Section 14(e), determined as of the end of such term.

(b) Not less than 180 days prior to the end of the term of such Lease with respect to such Group, the Related Lessee may indicate, by written notice to the Lessor, the Related Lessee's interest in exercising the Related Lessee's purchase option described above, which notice shall set forth the Related Lessee's estimate of the Fair Market Value of the Items of Leased Equipment included in such Group as of the end of such term. If, on or before a date 135 days prior to the expiration of the term thereof, the Lessor and the Related Lessee are unable to agree upon a determination of the Fair Market Value of such Group, such Fair Market Value shall be determined in accordance with the procedure for Appraisal as described in Section 14(f) hereof. After a determination of the Fair Market Value of such Group has been made in accordance with the procedure described above, the Related Lessee may exercise its option to purchase such Group for the Fair Market Value thereof by delivering written notice of such exercise to the Lessor not less than 75 days prior to the expiration of the term of such Lease.

(c) In the event the Related Lessee exercises such option to purchase the Items of Leased Equipment included in a Group of Equipment at the end of the term thereof with respect to such Group, then, upon payment of the purchase price, the Lessor shall, upon request of the Related Lessee, execute and deliver to the Related Lessee, or to the Related Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Items of Leased Equipment of such Group are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for the Items of Leased Equipment of such Group, and such other documents as may be required to release the Items of Leased Equipment of such Group from the terms and scope of such Lease and to transfer title thereto to the Related Lessee or such assignee or nominee, in such form as may reasonably be requested by the Related Lessee, all at the Related Lessee's expense.

#### **SECTION 22. *Voluntary Termination***

(a) So long as no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default shall have occurred and be continuing under a particular Lease, the Related Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days prior written notice to the Lessor, to terminate such Lease on any Basic Rent Date thereafter with respect to all, but not less than all, Items of Leased Equipment included in a Group of Equipment if they shall have become obsolete or surplus to the Related Lessee's requirements. Such termination shall be

effective on the Basic Rent Date specified in such notice (hereinafter called the *Termination Date*). During the period from the giving of such notice until the Termination Date, the Related Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of such Items of Leased Equipment; the Related Lessee shall certify to the Lessor in writing the amount of each bid received by the Related Lessee and the name and address of the party (who shall not be the Related Lessee or any person, firm or corporation affiliated with the Related Lessee) submitting such bid. On the Termination Date, the Lessor shall with the written consent of the Related Lessee sell such Items of Leased Equipment without recourse or warranty, for cash, to whomsoever shall have submitted the highest bid prior to such date, and thereupon the Related Lessee shall deliver such Items of Leased Equipment so sold to the purchaser in the condition specified in such Lease. If no sale of such Items of Leased Equipment takes place on the Termination Date, such Lease shall continue in full force and effect as to such Items of Leased Equipment.

(b) The total sale price realized at any such sale shall be retained by the Lessor, and, in addition, the Related Lessee shall pay to the Lessor the amount of Basic Rent due on such Basic Rent Date, plus the excess, if any, of (A) the Termination Value for such Items of Leased Equipment, over (B) the proceeds of such sale less all expenses incurred by the Lessor in connection with such sale or with the collection or distribution of such payment. The obligation of the Related Lessee to pay Basic Rent with respect to such Items of Leased Equipment (including the installment of Basic Rent due on the Termination Date) shall continue undiminished until payment of the sale proceeds and all or any portion of the Termination Value, if any, payable to the Lessor under such Lease with respect to such Items of Leased Equipment. Upon the receipt of such payment the obligation of the Related Lessee to pay Basic Rent under such Lease with respect to such Items of Leased Equipment shall cease. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Related Lessee to obtain bids, or otherwise to take any action in connection with any such sale, other than as expressly provided herein.

### **SECTION 23.   *Tax Indemnification***

(a) Each Lease created pursuant to this Master Equipment Lease is to be entered into on the basis that for federal income tax purposes (and to the extent allowable for state and local tax purposes), the Lessor (or the consolidated federal taxpayer group of which the Lessor is a part) intends:

(1) to take the investment tax credit allowed by section 38 and related sections of the Internal Revenue Code of 1954, as amended (*Code*), in an amount equal to the percentage of Lessor's Cost of the Items of Leased Equipment set forth in Exhibit 2 to the Related Lease Supplement (*Investment Tax Credit*);

(2) to deduct accelerated depreciation on the Leased Equipment under section 167(b) of the Code based upon the depreciable life, salvage value and depreciation method set forth in Exhibit 2 to the Related Lease Supplement (*Depreciation Deduction*);

(3) to deduct under section 163 of the Code the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to any indebtedness incurred by the Lessor in financing its purchase of the Leased Equipment (*Interest Deduction*);

(4) to treat any loss on the sale or other disposition of all or any part of the Leased Equipment, other than a sale or other disposition at or after the end of the term of such Lease or a voluntary transfer of all or a part of the Leased Equipment while no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing under such Lease, to be deductible in full as an ordinary loss (*Ordinary Loss Deduction*);

(5) to realize as gross income with respect to the transactions contemplated by such Lease, including, without limitation, any sale or other disposition of all or any portion of the Leased Equipment (other than a sale at or after the end of the term of such Lease or a voluntary transfer of any interest in the Leased Equipment by the Lessor while no Event of Default, or event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default, has occurred and is continuing under such Lease) only (A) the Basic Rent payments accrued in the amounts and at the time specified in Section 4 of the Master Equipment Lease and interest thereon, (B) payments pursuant to this Section, Section 11, Section 16 and Section 20 of the Master Equipment Lease and interest thereon, and (C) payments of Casualty Value or Termination Value under Section 14 or Section 22 of the Master Equipment Lease; and

(6) not to recapture any Investment Tax Credit for any reason, including by reason of any replacement, alterations, modifications and/or additions to the Leased Equipment made by Related Lessee or any other party, pursuant to such Lease or otherwise.

(b) The Lessor in its capacity as trustee intends not to be subject to any taxes, fees or other charges imposed by any federal, state or local government or taxing authority which are based on net income or items of tax preference (or any such taxes, fees or other charges which are based on or measured by gross income or gross receipts which may be imposed as a substitute for or in relief of (and not in addition to) taxes based on or measured by net income) as a result of its participation in its capacity as trustee in the transactions contemplated by the Indenture, the Related Participation Agreement or such Lease, except any taxes, fees or other charges which are based upon, or measured by, compensation received by the Lessor for its service as trustee.

(c) If for any reason the Lessor shall not have or shall lose the right to claim, or if there shall be a disallowance, elimination, reduction, nonrealization or disqualification in whole or in part with respect to the Lessor, of (i) the Investment Tax Credit (*Loss of Investment Tax Credit*), (ii) the Depreciation Deduction (*Loss of Depreciation Deduction*), (iii) the Interest Deduction (*Loss of Interest Deduction*) or (iv) the Ordinary Loss Deduction (*Loss of Ordinary Loss Deduction*) (collectively referred to as a *Loss*), or if for any reason the Lessor shall be required to include in gross income with respect to such Lease or any transactions therein contemplated any amount other than those amounts referred to in paragraph (a)(5) of this Section (*Additional Inclusion*), or if the Lessor shall be required to recapture any Investment Tax Credit at any time during the term of such Lease other than as a result of events which require the payment of Casualty Value or Termination Value under Section 14 or Section 22 of the Master Equipment Lease (*Recapture*), the Related Lessee shall pay to the Lessor an amount sufficient, after deducting any taxes payable thereon or with respect thereto, to compensate the Lessor for the additional income tax liability thereby incurred.

The amount to be paid by the Related Lessee to the Lessor on account of any Loss, Additional Inclusion or Recapture shall be an amount equal to the sum of (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the sum of the amount of the additional income tax liability incurred by reason of the Loss, Additional Inclusion or Recapture and the amount of any interest and Additions to Tax payable by the Lessor as a result of such Loss, Additional Inclusion or Recapture which do not reduce the Lessor's federal, state and local income tax payments in the year paid or accrued, plus (ii) the amount of any interest and any Additions to Tax payable by the Lessor as a result of such Loss, Additional Inclusion or Recapture which reduce the Lessor's federal, state and local income tax payments in the year paid or accrued. (For purposes of such Lease, *Additions to Tax* shall mean those penalties imposed under federal, state and local income tax laws and those payments described in sections 6651(a)(3), 6653, 6655 of the Code and corresponding provisions of the state and local income tax laws, but

only if such penalties are imposed or such payments, other than payments under section 6655, are required, as the result of an act or failure to act of Related Lessee.)

(d) If for any reason the Lessor in its capacity as trustee shall be required to pay any taxes, fees or other charges (including interest, penalties and Additions to Tax thereon) imposed by any federal, state or local government or taxing authority, other than those taxes, fees or other charges excepted in paragraph (b) of this Section, as a result of its participation in its capacity as trustee in the transactions contemplated by the Indenture, the Related Participation Agreement or such Lease (*Lessor's Taxes*), the Related Lessee shall pay to the Lessor an amount equal to the sum of (i) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any federal, state or local government or taxing authority, shall be equal to the amount of such Lessor's Taxes plus any interest and Additions to Tax payable by the Lessor as a result of the imposition of the Lessor's Taxes which do not reduce the Lessor's federal, state and local income tax payments of the Lessor in the year paid or accrued, plus (ii) the amount of any interest and Additions to Tax payable by the Lessor as a result of the imposition of the Lessor's Taxes which reduce the Lessor's federal, state and local income tax payments in the year paid or accrued.

(e) If the Lessor claims payment under this Section on account of any Loss, an Additional Inclusion or a Recapture (collectively referred to as a *Loss of Tax Benefits*), or if the Lessor claims payment under this Section on account of the imposition of Lessor's Taxes, the Lessor shall provide the Related Lessee with a written notice of such claim, which notice shall be accompanied by a statement describing in detail the Loss of Tax Benefits or Lessor's Taxes and setting forth the computation of the amount(s) so payable. The amount(s) payable to the Lessor shall be paid on or prior to the later of (i) the date that the Lessor (or the consolidated federal taxpayer group of which the Lessor is a part) shall pay the tax increase resulting from such Loss of Tax Benefits or the Lessor's Taxes (or suffers a reduction in the amount of any refund which the Lessor would have been entitled to receive but for the Loss of Tax Benefits or the Lessor's Taxes) or (ii) 30 days after the date of the notice described in this Section.

(f) If the event which results in a Loss of Tax Benefits for which an amount has been paid pursuant to this Section has the effect of reducing the Lessor's tax liability, including without limitation a reduction in the tax liability of the Lessor which results from a disposition of any interest in the Leased Equipment, the Lessor shall pay to the Related Lessee within 30 days after the Lessor has filed its income tax return for the year in which its tax payments have been reduced the sum of (i) the amount by which the Lessor's tax liability has been reduced as a result of such Loss of Tax Benefits, and (ii) the reduction in tax payments attributable to the deduction of the amount described in clause (i) of this sentence.

(g) The Lessor shall not be entitled to a payment under this Section on account of any Loss of Tax Benefits which would not have occurred but for one or more of the following events: (i) a disposition of the Leased Equipment or such Lease by the Lessor other than pursuant to its rights under Section 19 of the Master Equipment Lease, or (ii) a failure of the Lessor to timely or properly claim the Investment Tax Credit, Depreciation Deduction, Interest Deduction or Ordinary Loss Deduction for the Item or Items of Leased Equipment in its tax return (or the consolidated federal taxpayer group of which the Lessor is a part), if such failure is the result of the Lessor's negligence, or (iii) a disqualifying change in the nature of the business of the Lessor or the liquidation thereof, (iv) a foreclosure by any person holding through the Lessor of a lien on the Item or Items of Leased Equipment, which foreclosure results solely from an act of the Lessor, or (v) any event which by the terms of such Lease requires payment by the Related Lessee of the Casualty Value or Termination Value, if such Casualty Value or Termination Value is thereafter actually paid by the Related Lessee, and then only to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Related Lessee pursuant to this Section, or (vi) the failure of the Lessor to have sufficient liability for federal income tax against which to credit the Investment Tax Credit or sufficient

income to benefit from the Depreciation Deduction, Interest Deduction or Ordinary Loss Deduction which constitute the Loss of Tax Benefits.

#### **SECTION 24.   *Notices***

All communications and notices provided for in a particular Lease shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail prepaid, addressed as follows: (1) if to the Lessor, at P.O. Box 30007, Salt Lake City, Utah 84125, Attention: Trust Department, Corporate Division (with copies to (A) Itel Leasing Corporation at One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, (B) United States Trust Company of New York, as Trustee, at 130 John Street, New York, New York 10038, Attention: Corporate Trust and Agency Division, and (C) the Related Beneficiary, at its address specified in the Related Participation Agreement), (2) if to the Related Lessee, c/o the Master Lessee at Master Lessee's address set forth below, and (3) if to the Master Lessee, at 114 West 11th Street, Kansas City, Missouri 64105, Attention: General Counsel, or at such other address as any such party may from time to time designate by notice duly given in accordance with this Section to each other party.

#### **SECTION 25.   *Amendments and Miscellaneous***

(a) The terms of a particular Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor, the Related Lessee and the Master Lessee, *provided that* no such waiver, alteration, modification, amendment or supplement shall make any change with respect to such Lease, and no termination shall be made, which is prohibited by the Indenture, as implemented by the Related Supplement. The terms of this Master Equipment Lease may be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever by a written instrument signed by the Lessor and the Master Lessee, subject to the proviso contained in the immediately preceding sentence, to the extent such waiver, alteration, modification, amendment, supplement or termination affects a particular Lease.

(b) A particular Lease (including all agreements, covenants, representations and warranties) shall be binding upon and inure to the benefit of the Lessor and its successors, assigns, agents, servants and personal representatives and, where the context so requires, any Related Beneficiary and the Trustee (as assignee and secured party) and the successors, assigns, agents, servants and personal representatives of any Related Beneficiary or the Trustee (as assignee and secured party), and the Related Lessee and the Master Lessee and their successors and, to the extent permitted thereby, assigns. With respect to the provisions of Sections 7, 11, 16 and 23 hereof, any Related Beneficiary, the Trustee (as assignee and secured party), any holder of obligations of the Lessor issued in connection with such Lease and the successors, assigns, agents, servants and personal representatives of the foregoing and of the Lessor, and any corporation controlling, controlled by or under common control with any Related Beneficiary, the Trustee (as assignee and secured party), any holder of obligations of the Lessor issued in connection with such Lease and the Lessor shall each be indemnified thereunder and, with respect to clause (2) of the proviso to Section 16 hereof, the willful misconduct or gross negligence of any one such person shall not affect the rights of any other such person under such Section. All payments of indemnity hereunder shall be paid directly to the party entitled to such indemnification payments.

(c) All agreements, representations and warranties contained in a particular Lease or in any document or certificate delivered pursuant thereto or in connection therewith shall survive the execution and delivery of such Lease and the expiration or other termination of such Lease.

(d) Any provision of a particular Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Master Lessee and the Related Lessee hereby waive any provision of law which renders any provision thereof prohibited or unenforceable in any respect.

(e) A particular Lease shall constitute an agreement of lease and nothing therein shall be construed as conveying to either the Master Lessee or the Related Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(f) The single executed original of the Related Lease Supplement marked *Original* (together with a conformed copy of this Master Equipment Lease) shall be the *Original* of a particular Lease and all other counterparts thereof shall be marked and be *Duplicates*. To the extent that a particular Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in such Lease may be created through the transfer or possession of any counterpart other than the *Original* of such Lease.

(g) This Master Equipment Lease and any Lease Supplement may be executed in any number of counterparts and by the different parties hereto or thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to and retained by the Lessor and the Master Lessee, respectively.

(h) Each Lease shall be governed by, and construed in accordance with, the laws of the State of New York.

(i) The headings of the sections of this Master Equipment Lease have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the Lessor and the Master Lessee have each caused this Master Equipment Lease to be duly executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**FIRST SECURITY BANK OF UTAH, N.A.**  
and **THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely as Owner  
Trustees under a Master Trust Agreement  
dated as of May 1, 1975 between the Owner  
Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976,  
as *Lessor*

By **FIRST SECURITY BANK OF UTAH, N.A.**,  
not in its individual capacity, but solely as  
Corporate Trustee and on behalf of the Individual

**EXHIBIT A**  
**to Master Equipment Lease**

**CERTIFICATE OF ACCEPTANCE NO. —**

*under*

**KANSAS CITY SOUTHERN INC. [Year of Creation of Lease] Equipment Lease No. \_\_\_\_\_ (the *Lease*)** between **FIRST SECURITY BANK OF UTAH, N.A.** and **THOMAS C. CUTHBERT**, not in their individual capacities, but solely as Owner Trustees under a Master Trust Agreement dated as of May 1, 1975 between the Owner Trustees and Itel Leasing Corporation as lessor (the *Lessor*) and as amended as of October 1, 1976, the corporation named on the signature page hereof as "*Lessee*" (the *Lessee*) and **KANSAS CITY SOUTHERN INDUSTRIES, INC.** (the *Master Lessee*).

**1.    *Items of Equipment***

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, tested and inspected by the Lessee, found to be in good order and repair and in accordance with specifications and accepted as Items of Equipment under the Lease, all on the date indicated below:

*Group of Equipment:*

*Location of Items of  
Equipment:*

*Date of Acceptance:*

**2.    *Representations by the Lessee and the Master Lessee***

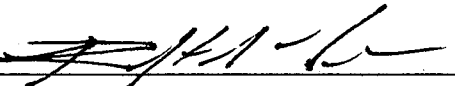
The Lessee and the Master Lessee hereby represent and warrant to the Lessor, any Related Beneficiary, the Trustee and any Related Lender, as such terms are defined in the Master Equipment Lease dated as of October 1, 1976 between the Lessor and the Master Lessee (the *Master Equipment Lease*), on the Date of Acceptance with respect to each Item of Equipment that:

(1) The representations and warranties of the Lessee set forth in Section 8 of the Master Equipment Lease and the applicable representations and warranties of the Master Lessee set forth in Section 9 of the Master Equipment Lease are true and correct in all material respects on and as of such date as though made on and as of such date;

(2) The Lessee and the Master Lessee have satisfied or complied with all requirements set forth in the Related Participation Agreement, as such term is defined in the Master Equipment Lease, and in the Lease to be satisfied or complied with on or prior to such date;



Trustee,  
as *Corporate Trustee*

By   
Authorized Officer

**KANSAS CITY SOUTHERN INDUSTRIES, INC.,**  
as *Master Lessee*

By \_\_\_\_\_  
Vice President

**SCHEDULE 1**  
to Certificate of Acceptance No. \_\_\_\_\_

**DESCRIPTION OF EQUIPMENT  
AND  
LESSOR'S COST**

<u>Quantity</u>	<u>Manufacturer or Seller</u>	<u>Description</u>	<u>Identification or Serial No.</u>	<u>New or Used</u>	<u>Lessor's Cost</u>
					\$

Total Lessor's Cost \$ \_\_\_\_\_

\*True Lease Filing:

Debtor: First Security Bank of Utah, N.A.  
and Thomas C. Cuthbert, not in their  
individual capacities but solely as  
Owner Trustees  
Secured Party: United States Trust Company  
of New York, as Trustee

Lessor/Lessee Filing  
(precautionary):

Lessor: First Security Bank of Utah, N.A.  
and Thomas C. Cuthbert, not in their  
individual capacities but solely as  
Owner Trustees  
Lessee:  
Assignee: United States Trust Company  
of New York, as Trustee

**EXHIBIT A**  
**to Master Equipment Lease**

**CERTIFICATE OF ACCEPTANCE NO. —**

*under*

**KANSAS CITY SOUTHERN INC. [Year of Creation of Lease] Equipment Lease No. \_\_\_\_\_ (the *Lease*)** between **FIRST SECURITY BANK OF UTAH, N.A. and THOMAS C. CUTHBERT**, not in their individual capacities, but solely as Owner Trustees under a Master Trust Agreement dated as of May 1, 1975 between the Owner Trustees and IteL Leasing Corporation as lessor (the *Lessor*) and as amended as of October 1, 1976, the corporation named on the signature page hereof as "*Lessee*" (the *Lessee*) and **KANSAS CITY SOUTHERN INDUSTRIES, INC. (the *Master Lessee*)**.

**1.   *Items of Equipment***

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, tested and inspected by the Lessee, found to be in good order and repair and in accordance with specifications and accepted as Items of Equipment under the Lease, all on the date indicated below:

*Group of Equipment:*

*Location of Items of  
Equipment:*

*Date of Acceptance:*

**2.   *Representations by the Lessee and the Master Lessee***

The Lessee and the Master Lessee hereby represent and warrant to the Lessor, any Related Beneficiary, the Trustee and any Related Lender, as such terms are defined in the Master Equipment Lease dated as of October 1, 1976 between the Lessor and the Master Lessee (the *Master Equipment Lease*), on the Date of Acceptance with respect to each Item of Equipment that:

(1) The representations and warranties of the Lessee set forth in Section 8 of the Master Equipment Lease and the applicable representations and warranties of the Master Lessee set forth in Section 9 of the Master Equipment Lease are true and correct in all material respects on and as of such date as though made on and as of such date;

(2) The Lessee and the Master Lessee have satisfied or complied with all requirements set forth in the Related Participation Agreement, as such term is defined in the Master Equipment Lease, and in the Lease to be satisfied or complied with on or prior to such date;

(3) No Event of Default under the Lease or event which, with the giving of notice or the lapse of time, or both, would become such an Event of Default has occurred and is continuing; and

(4) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to such Item of Equipment required to be obtained under the terms of the Lease.

\_\_\_\_\_  
as *Lessee*

By \_\_\_\_\_

**KANSAS CITY SOUTHERN INDUSTRIES, INC.,**  
as *Master Lessee*

By \_\_\_\_\_

Accepted on behalf of the Lessor:

**FIRST SECURITY BANK OF UTAH, N.A.**  
and **THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely as Owner  
Trustees under a Master Trust Agreement  
dated as of May 1, 1975 between the Owner  
Trustees and Itel Leasing Corporation,  
and as amended as of October 1, 1976,  
as *Lessor*

By \_\_\_\_\_  
*Authorized Representative*

**EXHIBIT B**  
**to Master Equipment Lease**

**LEASE SUPPLEMENT NO. \_\_\_\_**

**THIS LEASE SUPPLEMENT NO. \_\_\_\_** dated the date set forth in Exhibit 2 hereto among FIRST SECURITY BANK OF UTAH, N.A., a national banking association (the *Corporate Trustee*), and THOMAS C. CUTHBERT (the *Individual Trustee*), not in their individual capacities, but solely as trustees under a Master Trust Agreement dated as of May 1, 1975 between them and Itel Leasing Corporation (the *Owner Trustees* or the *Lessor*) and as amended as of October 1, 1976, the corporation named on the signature page hereof as "Lessee" (the *Lessee*) and KANSAS CITY SOUTHERN INDUSTRIES, INC. (the *Master Lessee*).

**W I T N E S S E T H :**

WHEREAS, the Master Lessee and the Lessor have executed and delivered a Master Equipment Lease dated as of October 1, 1976 (the *Master Equipment Lease*) for the purpose of creating an arrangement whereby separate leases may be created from time to time by either the Master Lessee or a subsidiary thereof for the purposes of leasing certain equipment in separate and distinct transactions; and

WHEREAS, in accordance with the Master Equipment Lease the Lessor, the Lessee and the Master Lessee are executing and delivering this Lease Supplement for the purpose of creating an agreement for lease of specific equipment described herein consisting of the Master Equipment Lease as it is supplemented or amended by this Lease Supplement (the *Lease*), which Lease shall be deemed dated the date of this Lease Supplement and shall be designated as *Kansas City Southern Industries, Inc. [Year of Creation of Lease] Equipment Lease No. \_\_\_\_*.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1.   *Definitions***

For the purposes of this Lease Supplement, and of the Master Equipment Lease insofar as it relates to the Lease created by this Lease Supplement, the following terms shall have the following meanings for all purposes of the Lease:

*Equipment*, and individually an *Item* or *Item of Equipment*, shall mean the items of equipment described in Exhibit 1 hereto.

*Final Delivery Date, Daily Lease Rate Factor, Rent Commencement Date, Interim Rent Date, Basic Lease Rate Factor, Basic Rent Dates, First Basic Rent Date, Last Basic Rent Date, Expiration Date, Depreciable Life, Investment Tax Credit, Depreciation Method, Overdue Rate, Return of Equipment and Marking of Equipment* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 hereto.

*First Termination Date* and *Lease Extension Periods*, if either or both of such terms shall be applicable to the Lease, shall have the meanings with respect to each Group of Equipment set forth in Exhibit 2 hereto.

*Casualty Value* and, if such term shall be applicable to the Lease, *Termination Value* shall have the meanings with respect to each Group of Equipment set forth in Exhibit 3 hereto.

*Group of Equipment* and *Lessor's Cost* shall have the meanings set forth in the Certificate of Acceptance with respect to any Item or Items of Equipment.

Such terms as are defined in the Master Equipment Lease shall, when used in this Lease Supplement, have the same meanings as set forth in the Master Equipment Lease.

**SECTION 2.     *Agreement, Representations and Warranties of the Lessee and the Lessor***

The Lessee hereby agrees to become a party to, and the Lessee and the Lessor hereby agree to be bound by the terms and provisions of and hereby make the representations and warranties contained in, the Master Equipment Lease as it related to the Lease created hereby.

**SECTION 3.     *Agreement, Representations and Warranties of the Master Lessee***

The Master Lessee, by its execution and delivery of this Lease Supplement, specifically confirms its applicable representations, warranties and covenants contained in Section 9 of the Master Equipment Lease, including without limitation its agreement of guaranty contained in paragraph (b), clause (vi) thereof if the Master Lessee is not the Lessee under the Lease.

**SECTION 4.     *Special Terms***

Any special terms set forth in Exhibit 2 hereto shall be applicable to the Lease created by this Lease Supplement as though fully set forth therein.

IN WITNESS WHEREOF, the Lessor, the Lessee and the Master Lessee have caused this Lease Supplement to be duly executed by their respective officers thereunto duly authorized, on the date set forth in Exhibit 2 hereto.

**FIRST SECURITY BANK OF UTAH, N.A. and  
THOMAS C. CUTHBERT**, not in their  
individual capacities, but solely  
as trustees under a Master Trust  
Agreement dated as of May 1, 1975  
between them and Itel Leasing  
Corporation and as amended as  
of October 1, 1976,  
as *Lessor*

By **FIRST SECURITY BANK OF UTAH, N.A.**,  
not in its individual capacity, but  
solely as Corporate Trustee and on  
behalf of the Individual Trustee,  
as *Corporate Trustee*

By \_\_\_\_\_  
*Authorized Officer*

\_\_\_\_\_  
as *Lessee*

By \_\_\_\_\_  
*Vice President*

**KANSAS CITY SOUTHERN INDUSTRIES, INC.**,  
as *Master Lessee*

By \_\_\_\_\_  
*Vice President*

**EXHIBIT 1**  
**to Lease Supplement No. \_\_\_\_**

**DESCRIPTION OF EQUIPMENT**

<u>Groups of Equipment</u>	<u>Quantity</u>	<u>Manufacturer /Seller</u>	<u>Description</u>	<u>Estimated Lessor's Cost</u>	
				<u>Item</u>	<u>Aggregate</u>

Total Estimated Lessor's Cost

\$ \_\_\_\_\_



**EXHIBIT 2**  
**to Lease Supplement No. \_\_\_\_**  
**GROUPS OF EQUIPMENT**  

---

*Date of Lease and Lease Supplement:*

*Final Delivery Date:*

*Daily Lease Rate Factor:*

*Rent Commencement Date:*

*Interim Rent Date:*

*Basic Lease Rate Factor:*

*Basic Rent Dates:*

*First Basic Rent Date:*

*Last Basic Rent Date:*

*Expiration Date:*

*Depreciable Life:*

*Investment Tax Credit:*

*Depreciation Method:*

*Overdue Rate:*

*Return of Equipment:*

*Marking of Equipment:*

*First Termination Date:*

*Lease Extension Periods:*

*Description of Litigation, if any,  
Required by Section 8(d) of the  
Master Equipment Lease:*

*Description of Litigation, if any,  
Required by Section 9(b)(iv) of the  
Master Equipment Lease:*

*Special Terms Pursuant to Section 4  
of this Lease Supplement:*

**EXHIBIT 3**  
**to Lease Supplement No. \_\_\_\_**  
**GROUPS OF EQUIPMENT**

---

The Casualty Value and Termination Value of each Item shall be the percentage of the Lessor's Cost of such Item set forth opposite the applicable Rent Payment with respect to the applicable Group of Equipment:

Interim Rent Date  
and Basic  
Rent Payment  
No.

Casualty Value (a)(b)

Termination Value (a)(b)

(a) Casualty Values and Termination Values are expressed as a percentage of Lessor's Cost. Such percentages have been computed without regard to recapture of Investment Tax Credit. Consequently, such percentages applicable on the Interim Rent Date or any Basic Rent Date where a Casualty Value or a Termination Value shall be payable with respect to an Event of Loss or termination occurring on or before the third, fifth and seventh anniversaries of the date of acceptance set forth in the Certificate of Acceptance for such Item shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of the Lease, Casualty Values and Termination Values payable on such dates shall be determined on the basis of the sum of such percentages.

<u>Anniversary of the Date of Acceptance</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
Third	%
Fifth	%
Seventh	%

(b) Any payment of Casualty Value on the Interim Rent Date or any Basic Rent Date and any payment of Termination Value on any Basic Rent Date shall in no event be less than an amount which, assuming the payment in full of all amounts of Basic Rent due and payable on such date, shall be equal to that portion of the principal of the Notes of such series, together with accrued interest thereon, due and payable in consequence of such Event of Loss or termination.